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# Legal Deserts: a Multi-State Perspective on Rural Access to Justice (forthcoming)

Danielle M. Conway

University of Maine School of Law, [dconway@maine.edu](mailto:dconway@maine.edu)

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# Legal Deserts: A Multi-State Perspective on Rural Access to Justice

Lisa R. Pruitt,<sup>\*</sup> Amanda L. Kool,<sup>o</sup> Lauren Sudeall Lucas,<sup>o</sup> Michele Statz,<sup>Y</sup> Danielle M. Conway,<sup>3</sup> and  
Hannah Haksgaard<sup>β</sup>

## Abstract

*Rural America faces an increasingly dire access to justice crisis, which serves to exacerbate the already disproportionate share of social problems afflicting rural areas. One critical aspect of that crisis is the dearth of information and research regarding the extent of the problem and its impacts. This article begins to address that gap by providing surveys of rural access to justice in six geographically, demographically, and economically varied states: California, Georgia, Maine, Minnesota, South Dakota, and Wisconsin. In addition to providing insights about the distinct rural challenges confronting each of these states, the legal resources available, and existing policy responses, the article explores common themes that emerge through this multi-state lens, thus framing a richer, broader discussion of rural access to justice, with particular attention to the rural attorney shortage.*

*Written for a special issue on “Revitalizing Rural,” the article ultimately proposes a two-step approach toward closing the rural justice gap. First, although the information presented here provides a solid foundation, a critical need remains for ongoing careful and thoughtful study of*

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<sup>\*</sup> Martin Luther King, Jr., Professor of Law, University of California, Davis. Thanks to Anujan Jeevaprakash, Casey Crumrine, Ariella Stefanson, and Madeline Thomas for extraordinary research assistance and to Salena Copeland, Executive Director of the Legal Aid Association of California, my co-chair of the Rural Task Force of the California Commission on Access to Justice, for invaluable conversations and resources. Liliana Moore managed the manuscript and “Meeker data” brilliantly, while also assisting with many research tasks. Sahoko Yui, PhD, produced the maps based on the Meeker data. We are grateful to Christopher Chavis and Louise Trubek for comments on earlier drafts.

Pruitt convened this group to offer a comparative perspective on the rural access-to-justice landscape across different regions, and she wrote the section on California. Each author drafted her own state(s) sections, and Amanda L. Kool and Lisa Pruitt wrote the analysis comparing the states and the proposal of a new approach. Authors are listed in the byline in order of their contributions.

<sup>o</sup> Independent legal consultant; former Lecturer on Law, Harvard Law School.

<sup>o</sup> Associate Professor and Faculty Director, Center for Access to Justice, Georgia State University College of Law. I am grateful for the contributions of Bryan Janflone and Darcy Meals and to the State Bar of Georgia for providing data on lawyers across the state. Much credit is due to Timur Selimovic, who provided significant assistance in researching and writing this section of the Article, and to the students in GSU Law’s Access to Justice: Law Reform course who provided helpful input as well. Thanks to Lisa Foster for comments on a prior draft.

<sup>Y</sup> Anthropologist of law and Assistant Professor, Department of Family Medicine and Biobehavioral Health, University of Minnesota Medical School, Duluth. The research on which this portion is based is part of a three-year qualitative study on rural access to justice across northern Minnesota and Wisconsin. It is funded by the National Science Foundation Law and Social Science Program, award no. 1729117.

<sup>3</sup> Dean & Professor of Law, University of Maine School of Law (Maine Law). I would like to recognize my colleague, Rachel Reeves, Esq., who serves as Director of Field Placement Programs at Maine Law for her extraordinary efforts in championing the need to make legal services accessible and affordable to citizens and residents living in rural Maine. Ms. Reeves served on the Board of Overseers of the Bar’s Task Force to Study Bar Demographics as well as Maine Law’s planning committee that launched the Maine Law School Rural Lawyer Program.

<sup>β</sup> Assistant Professor of Law, University of South Dakota School of Law. I would like to thank the many members of the South Dakota legal community who gave their valuable time to share their experiences and expertise with me. In particular, I thank Chief Justice David Gilbertson for granting me an in-person interview and Kelsea Kenzy Sutton for reading an early draft of this manuscript.

*the legal needs and lack of legal resources in rural areas. Second, the unique institutional, structural, and demographic characteristics of rural areas will require tailored, innovative, and data-driven solutions to match appropriate legal services with needs. We advocate a re-thinking of the roles of many justice system stakeholders, with particular attention to the critical steps that legal educators should take to bridge the justice gap. Our hope is that this article will inform and expand access-to-justice conversations so that they more intentionally address the legal needs of the vast rural reaches of our nation, thus furthering the ultimate goal of realizing access to justice for all Americans.*

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## INTRODUCTION

Rural America is frequently discussed as a single, homogeneous region, framed primarily as a counterpoint to America’s cities.<sup>1</sup> In fact, our country’s vast rural areas feature cultural, geographic, racial, ethnic, political, and economic diversity that is too rarely recognized and less often discussed. So long as rural life and its challenges are overgeneralized in public discourse, we lose collective awareness of the diversity of our nation’s rural experiences. As a consequence, policies seeking to respond to rural needs may fail to address the full spectrum of issues at play.

In spite of the diversity among rural people and places, the rural experience does pose some common challenges. Unfortunately, many contemporary rural commonalities are best characterized as social problems.<sup>2</sup> Compared to our nation’s metropolitan areas, rural America suffers disproportionately from

<sup>1</sup> See, e.g., Janet Adamy & Paul Overberg, *Rural America is the New ‘Inner City’*, WALL ST. J. (May 26, 2017), <https://www.wsj.com/articles/rural-america-is-the-new-inner-city-1495817008> [<https://perma.cc/YG79-HEQV>]; Daniel T. Lichter and James P. Ziliak, *The Rural-Urban Interface: New Patterns of Spatial Interdependence and Inequality in America* 672 ANNALS AAPSS 6 (July 2017).

<sup>2</sup> Adamy & Overberg, *supra* note 1 (“In terms of poverty, college attainment, teenage births, divorce, death rates from heart disease and cancer, reliance on federal disability insurance and male labor-force participation, rural counties now rank the worst among the four major U.S. population groupings (the others are big cities, suburbs and medium or small metro areas).”). See also *infra* Tables 1-7. For a collection of statistics regarding the income, poverty rate, unemployment rate, and level of education for

poverty,<sup>3</sup> poor health outcomes,<sup>4</sup> the opioid epidemic,<sup>5</sup> educational deficits,<sup>6</sup> and environmental degradation,<sup>7</sup> among other challenges. These problems are clearly interconnected: the less money a person has, the less likely she is to have access to healthcare and thus the more likely she is to suffer poor health outcomes; a person with poor health is less likely to achieve educational milestones or remain gainfully employed; and so forth.<sup>8</sup>

Pervasive rural social problems are also clearly interconnected with law, justice systems, and—by extension—lawyers. The 2017 Justice Gap Report by the Legal Services Corporation (LSC) gave special attention to rural Americans as a distinctly vulnerable population that merited analysis, along with a number of other highly vulnerable populations: seniors over age 65, veterans, persons with disabilities, parents/guardians of children under 18, and survivors of domestic violence/sexual assault.<sup>9</sup> The Report estimated that 10 million rural Americans have incomes below 125% of the federal poverty line and therefore are eligible for LSC-funded services.<sup>10</sup> The Report also found that three-quarters of America’s low-income rural residents faced at least one civil legal problem in a year, while nearly a quarter of rural residents experienced six or more civil legal problems in a year.<sup>11</sup> Yet only 14% of rural residents received adequate assistance for their civil legal problems, a rate less than half the national average.<sup>12</sup> The same Report lists the three most common types of civil legal problems faced by low-income rural residents: health; consumer and finance; and employment issues.<sup>13</sup> These categories closely track the disproportionately rural problems outlined above.<sup>14</sup>

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the rural versus urban areas of the states surveyed herein, please see *State Fact Sheets*, U.S. DEP’T. AGRIC., ECON. RESEARCH SERV., <https://www.ers.usda.gov/data-products/state-fact-sheets/> (last updated Feb. 7, 2018) [<https://perma.cc/TE78-PQYQ>]. Note that the comparison data shows that as compared to urban areas, in all six states surveyed, rural income is lower, rural unemployment is higher, and rural employment change is lower. Rural poverty is higher in the rural areas than it is in the urban areas of all states surveyed except Wisconsin. Table 7.

<sup>3</sup> U.S. DEP’T. AGRIC., ECON. RESEARCH SERV., *RURAL AMERICA AT A GLANCE*, 2017 EDITION 5 (Nov. 2017), <https://www.ers.usda.gov/webdocs/publications/85740/eib-182.pdf?v=43054> [<https://perma.cc/C2QX-PR LH>] (“Rural poverty is regionally entrenched. Over 300 rural counties (15.2 percent of all rural counties) are persistently poor, compared with just 50 urban counties (4.3 percent of all urban counties).”). See also Tim Marema, *Entrenched Child Poverty Worse in Rural Areas*, THE DAILY YONDER (Feb. 23, 2016), <http://www.dailyyonder.com/entrenched-child-poverty-worse-in-rural-areas/2016/02/23/11639/> [<https://perma.cc/7GBF-YPDL>] (citing Andrew Schaefer et al., *Child Poverty Higher and More Persistent in Rural America*, U. N.H., CARSEY SCHOOL PUB. POL’Y, (Winter 2016), <https://carsey.unh.edu/publication/rural-child-poverty-higher> [<https://perma.cc/S9PN-XTQ7>]; See also *infra* Table 3.

<sup>4</sup> KEVIN J. BENNETT ET AL., S.C. RURAL HEALTH RESEARCH CTR., *HEALTH DISPARITIES: A RURAL – URBAN CHARTBOOK 1* (June 2008), <https://www.ruralhealthresearch.org/publications/676> [<https://perma.cc/DQ6W-2TC8>] (“Rural residents experience a higher premature mortality rate, infant mortality rate, and age-adjusted death rate than urban and suburban residents. Rural adults are more likely to report poor health status, obesity and limitations in activity than urban residents.”).

<sup>5</sup> “Rural counties have seen a disproportionate jump in deaths from prescription-drug overdoses in the past 15 years, increasing at a pace three times that of the nation’s most urban counties.” Tim Marema, *Prescription Drug-Death Rate Grows Fastest in Rural*, THE DAILY YONDER (Aug. 9, 2016) <http://www.dailyyonder.com/prescription-drug-death-rate-grows-fastest-in-rural/2016/08/09/14662/> [<https://perma.cc/EL3K-29M3>]. See also *RURAL AMERICA AT A GLANCE*, *supra* note 3, at 3.

<sup>6</sup> See, e.g., Jon Marcus & Matt Krupnik, *The Rural Higher-Education Crisis*, THE ATLANTIC (Sept. 27, 2017), <https://www.theatlantic.com/education/archive/2017/09/the-rural-higher-education-crisis/541188/> [<https://perma.cc/Y3YV-Q5GK>]; Sarah Brown & Karin Fisher, *A Dying Town*, THE CHRONICLE OF HIGHER EDUC. (Dec. 29, 2017) <https://www.chronicle.com/interactives/public-health> [<https://perma.cc/C3VC-7VCK>] (highlighting the link between poor education and poor health outcomes). See also Table 6 (revealing educational disparities between rural and urban populations, including for example the dramatic fact that urban Georgians complete college at twice the rate of their rural counterparts).

<sup>7</sup> See, e.g., Loka Ashwood & Kate MacTavish, *Tyranny of the majority and rural environmental injustice*, 47 J. RURAL STUD. 271 (2016).

<sup>8</sup> See generally, *The Comprehensive Rural Wealth Framework*, RURAL POLICY RESEARCH INSTITUTE, [www.rupri.org/wp-content/uploads/Rural-Wealth-Framework-Final-12.18.17.pdf](http://www.rupri.org/wp-content/uploads/Rural-Wealth-Framework-Final-12.18.17.pdf) (last visited April 8, 2018).

<sup>9</sup> LEGAL SERVS. CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICAS* 19 (June 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [hereinafter THE JUSTICE GAP].

<sup>10</sup> *Id.* at 19.

<sup>11</sup> *Id.* at 21.

<sup>12</sup> *Id.* at 13 (reporting a national average of 28% to 38% of low-income residents receiving assistance).

<sup>13</sup> *Id.* at 48.

<sup>14</sup> *Id.* See *supra* notes 7–11 and accompanying text. One consequence of a lack of lawyers to meet rural legal needs is an increase in pro se litigants. While available statistics on pro se litigants do not focus on rural areas specifically, the state-level data is still

Rural residents do not fare any better when it comes to adequate representation in criminal matters. A report by the Vera Institute recently found that a shortage of defense counsel, along with other justice system deficits,<sup>15</sup> was driving an increase in rural jail populations, which in turn were driving up national incarceration rates.<sup>16</sup> Despite rural areas’ relatively low crime rates, incarceration rates in rural jails rose 436% between 1970 and 2013, even as they declined in urban areas.<sup>17</sup>

While many of the legal needs of rural residents’ track those of their urban counterparts, rural living does increase the likelihood of certain types of legal challenges. As detailed by Lisa Pruitt and Bradley Showman in *Law Stretched Thin: Access to Justice in Rural America* (2014):

The material spatiality that defines rural living also masks social problems, many with legal implications. Migrant farm workers and other rural residents endure substandard housing and abusive working conditions. The elderly, disabled, and veterans—all disproportionately represented in rural America—need a wide array of supports. The access to justice challenge for American Indians, who face myriad social ailments and disproportionately high poverty rates, is aggravated by the byzantine tapestry of state, federal, and tribal laws that form the backdrop to their lives. And rural places are increasingly the dumping ground for externalities associated with extractive industries and with all sorts of environmental hazards cast off by metropolitan areas. All of these implicate legal issues.<sup>18</sup>

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compelling: in 2016, nearly 80% of cases heard in Minnesota’s district courts involved at least one pro se litigant. See Hannah Covington, *Minnesota courts work to keep up with do-it-yourself demand*, STARTRIBUNE (Apr. 3, 2017, 10:29 PM), <http://www.startribune.com/minnesota-courts-work-to-keep-up-with-do-it-yourself-demand/418026573/> [https://perma.cc/NPN5-SH3Q].

<sup>15</sup> See JACOB KANG-BROWN & RAM SUBRAMANIAN, VERA INST. OF JUSTICE, OUT OF SIGHT: THE GROWTH OF JAILS IN RURAL AMERICA 7 (June 2017), [http://www.safetyandjusticechallenge.org/wp-content/uploads/2017/06/Out\\_of\\_sight\\_report.pdf](http://www.safetyandjusticechallenge.org/wp-content/uploads/2017/06/Out_of_sight_report.pdf) [https://perma.cc/DGV6-Z4FE]. Other justice system deficits noted included judges without law degrees, a lack of “court machinery...the investigative work of police and prosecution.” *Id.* at 17. See also Marc Levin and Michael Haugen, *Open Roads and Overflowing Jails: Addressing High Rates of Rural Pre-Trial Incarceration*, Texas Public Policy Foundation, Apr. 2018, <https://www.texaspolicy.com/content/detail/open-roads-and-overflowing-jails>; Lisa R. Pruitt and Beth Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 ARIZ. L. REV. 219 (2010) (documenting criminal justice system deficits in rural Arizona, particularly in relation to the right to counsel). Another recent report from New York State highlighted the shortage of defense counsel in rural areas, often resulting in the absence of counsel at arraignment. See Andrew Davis and Alyssa Clark, *Access to Counsel in Local Courts in Rural New York State*, New York State Bar Association Government, Law and Policy Journal, Vol. 17, No. 1, at 15-16 (2017).

<sup>16</sup> See KANG-BROWN & SUBRAMANIAN, *supra* note 15.

<sup>17</sup> See *id.* at 7, 13. The other reason for the rise in rural jails is outside jurisdictions, including state prisons and Immigration and Customs Enforcement. See Lisa R. Pruitt, *Rural prison building boom evolves into rural jail expansion boom?* LEGAL RURALISM BLOG (Sept. 6, 2016), <http://legallrualism.blogspot.com/2016/09/rural-prison-building-boom-evolves-into.html>; Lisa R. Pruitt, *Low-population counties sending people to prison at higher rates than cities*, LEGAL RURALISM BLOG (Sept. 4, 2016).

<sup>18</sup> Lisa R. Pruitt & Bradley Showman, *Law Stretched Thin: Access to Justice in Rural America* 59 S.D. L. REV. 466, 487–88 (2014) (citations omitted). Other U.S. scholars have also taken up the issue of rural lawyer shortages and associated access to justice challenges since the University of South Dakota Law School’s symposium on the issue. See, e.g., Hillary Wandler, *Spreading Justice to Rural Montana: Expanding Local Legal Services in Underserved Rural Communities*, 77 MONT. L. REV. 235 (2016) [hereinafter Wandler, *Expanding Local Legal Services*]; Hillary Wandler, *Spreading Justice to Rural Montana: Rural’s Impacts on Supply and Demand for Legal Services in Montana*, 76 MONT. L. REV. 225 (2015) [hereinafter Wandler, *Supply and Demand*]; Bryan L. Lynch, *Access to Legal Services in Rural Areas of the Northern Rockies: A Recommendation for Town Legal Centers*, 90 IND. L.J. 1683 (2015); Susan Drisko Zago, *Riding Circuit: Bringing the Law to Those Who Need It*, 12 FLA. A & M U.L. REV. 1 (2016).

Compared to those in other countries, however, U.S. scholars have been slow to come to the issue of rural legal practice and rural access to justice. See generally MARK BLACKSELL, KIM ECONOMIDES, & CHARLES WATKINS, JUSTICE OUTSIDE THE CITY: ACCESS TO LEGAL SERVICES IN RURAL BRITAIN (1991); Kim Economides, *The Country Lawyer: Iconography, Iconoclasm, and the Restoration of the Professional Image*, J.L. & SOC’Y, Spring 1992, at 115; Kim Economides, Mark Blacksell, & Charles Watkins, *Law and Geography*, J.L. & SOC’Y 161 (Summer 1986). More recently, Australian scholars have studied practical aspects of rural law practice and proposed changes to legal education and training to prepare students for it. See CAROLINE HART, THE SEVEN ELEMENTS OF SUCCESSFUL COUNTRY LAW FIRMS (The Federation Press, 2018); THE PLACE OF PRACTICE: LAWYERING IN RURAL AND REGIONAL AUSTRALIA (Trish Mundy, Amanda Kennedy and Jennifer Nielsen, eds. 2017). The Australian government has also taken up the issue of rural access to justice. LAW COUNCIL OF AUSTRALIA, THE JUSTICE PROJECT, RRR AUSTRALIANS CONSULTATION PAPER (Aug. 2017), available at <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/RRR%20Australians.pdf> [hereinafter RRR AUSTRALIANS CONSULTATION PAPER].

If a lack of rural lawyers results in a disproportionate percentage of rural legal issues going unaddressed, then these already-disproportionate rural social problems will be compounded.<sup>19</sup> This is a problem at both the individual level—meaning not enough lawyers or other forms of legal assistance are available to support the legal services needs of individuals—and at the policy level, where lawmakers might better understand how rural problems and their solutions differ from those in urban areas.<sup>20</sup> Adequately addressing legal issues at both the individual and policy levels requires not only lawyers who know the salient substantive area(s) of law, but lawyers who are also culturally competent to be effective in the communities in which these problems persist. As expressed in a *New York Times* article discussing an initiative to educate more would-be lawyers and legal assistants in rural India, “We can always teach them the law . . . [w]e can’t teach them to be from here.”<sup>21</sup>

Despite the immense need for lawyers in rural America, the number of attorneys practicing in rural areas falls painfully short.<sup>22</sup> While about twenty percent of our nation’s population lives in rural America, only two percent of our nation’s small law practices are located there.<sup>23</sup> The number of registered “active” attorneys in any location likely overstates the resources available in that area, as at any given time an untold number of those attorneys might be employed by government entities, working in non-legal jobs, functionally retired, not practicing law in an area of expertise needed by prospective clients, or otherwise not actually able to relieve the legal needs of the local population.<sup>24</sup> Rural residents who seek access to existing lawyers and courts often must overcome additional barriers, including vast distances,<sup>25</sup>

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Many themes we take up are echoed in the Australian Report, which also draws many conclusions similar to our own. These include diversity among rural areas; the multi-faceted nature of legal problems facing rural residents; lack of other services aggravating the inability of rural residents to access legal services; challenges related to distance and transportation, the promise of technology, the role of legal education, the need for more and better data, and the need for “tailored and multi-faceted responses . . . rather than ‘blanket’ solutions.” *Id.* at 2-4.

<sup>19</sup> While most if not all of the examples of rural legal needs mentioned involve remedial actions to redress grievances, a dearth of transactional attorneys in rural areas limits to the ability of individuals and communities to achieve economic independence and prosperity, thereby increasing the likelihood of remedial legal needs. This is implicitly recognized in the South Dakota incentive program, which acknowledges all that attorneys bring to rural communities, including human capital. *See generally* The Comprehensive Rural Wealth Framework, *supra* note 8.

<sup>20</sup> *See generally* Helen Swindlehurst et al., *Rural Proofing for Health: A Commentary*, PUBMED (May 9, 2005), [https://www.ncbi.nlm.nih.gov/pubmed/?term=Swindlehurst%20HF%5BAuthor%5D&cauthor=true&cauthor\\_uid=15885027](https://www.ncbi.nlm.nih.gov/pubmed/?term=Swindlehurst%20HF%5BAuthor%5D&cauthor=true&cauthor_uid=15885027); Sally Shortall & Margaret Alston, *To Rural Proof or Not to Rural Proof: A Comparative Analysis*, 44 *POLITICS AND POLICY* 35 (2016); *NRHA Rural Proofing Tool*, NHRA (Sept. 2015), [https://www.ruralhealthweb.org/getattachment/Advocate/Policy-Documents/RuralProofingPolicyPaperSeptember2015-\(1\).pdf.aspx?lang=en-US](https://www.ruralhealthweb.org/getattachment/Advocate/Policy-Documents/RuralProofingPolicyPaperSeptember2015-(1).pdf.aspx?lang=en-US); Lisa Pruitt, *An Introduction to “Rural-Proofing,” and Why We’re Unlikely to Implement It in the U.S.*, CONCURRING OPINIONS (May 27, 2017), <https://concurringopinions.com/archives/2017/05/an-introduction-to-rural-proofing-and-why-were-unlikely-to-implement-it-in-the-u-s.html>; Taylor Call, *California and the rural way of life: Part IV – Solutions to the lack of rural representation in California*, LEGAL RURALISM BLOG (Dec. 29, 2015), <http://legalruralism.blogspot.com/2015/12/california-and-rural-way-of-life-part.html>. Economides advocates rural proofing in the context of Australian and New Zealand justice system interventions. *See* Kim Economides, *Strategies for Meeting Rural Legal Needs: Lessons from Local, Regional and International Experience*, 16 *DEAKIN L. REV.* 47 (2011).

<sup>21</sup> Tina Rosenberg, *India’s Barefoot Lawyers*, N.Y. TIMES: OPINION (Aug. 8, 2017), <https://www.nytimes.com/2017/08/08/opinion/indias-barefoot-lawyers.html> [https://perma.cc/DT87-NCH7].

<sup>22</sup> Lorelei Laird, *In rural America, there are job opportunities and a need for lawyers*, A.B.A. JOURNAL (Oct. 2014), [http://www.abajournal.com/magazine/article/too\\_many\\_lawyers\\_not\\_here\\_in\\_rural\\_america\\_lawyers\\_are\\_few\\_and\\_far\\_between](http://www.abajournal.com/magazine/article/too_many_lawyers_not_here_in_rural_america_lawyers_are_few_and_far_between) [https://perma.cc/38ZX-GQNP]; Robin Runge, *Addressing the Access to Justice Crisis in Rural America*, A.B.A. HUM. RTS. MAG. (2014), [https://www.americanbar.org/publications/human\\_rights\\_magazine\\_home/2014\\_vol\\_40/vol\\_40\\_no\\_3\\_poverty/access\\_justice\\_rural\\_america.html](https://www.americanbar.org/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/access_justice_rural_america.html) [https://perma.cc/3P3V-565U].

<sup>23</sup> Pruitt & Showman, *supra* note 18, at 469; Laird, *supra* note 22.

<sup>24</sup> *ABA National Lawyer Population Survey: 10-Year Trend in Lawyer Population by State*, A.B.A. (Dec. 31, 2016), [https://www.americanbar.org/content/dam/aba/administrative/market\\_research/National%20Lawyer%20Population%20by%20State%202007-2017.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/market_research/National%20Lawyer%20Population%20by%20State%202007-2017.authcheckdam.pdf) [https://perma.cc/X3ML-8L9B] (noting that something as simple as whether or not an attorney accepts payments by credit card can determine whether or not a prospective client can obtain the lawyer’s services).

<sup>25</sup> *See generally* Michele Statz & Lisa R. Pruitt, *To Recognize the Tyranny of Distance: A Spatial Reading of Whole Woman’s Health v. Hellerstedt*, ENV’T & PLANNING A: ECON. & SPACE (forthcoming 2018) (elaborating on distance as a feature of rural life and when it has and has not been recognized as such by courts). “Urban areas make up only 3 percent of the entire land area of

insufficient (or nonexistent) public transit,<sup>26</sup> and lack of reliable communication tools, including cell phone service and broadband Internet.<sup>27</sup>

As a further consequence of so many barriers to access, individuals who live in areas without adequate or accessible legal representation may fail to know their legal rights or to recognize that legal recourse may be available for a particular problem. As Robin Runge summarized in a 2014 article:

The lack of access to information and enforcement of legal rights in rural communities has significant repercussions, including possibly violating state and federal law. It means people with disabilities go without access to public benefits or employment. Without adequate access to legal assistance, individuals living in rural areas face risk of eviction . . . and victims of domestic violence are at greater risk of serious injury . . . Research has indicated that in situations where there is a known lack of access to justice, those in positions of power use the lack of a rule of law to exploit vulnerable populations.<sup>28</sup>

In other words, a lack of access to justice can evolve into a greater and entrenched lack of agency in one’s life, effectively snowballing to become much larger than the original unaddressed legal issue(s).

When these many barriers to access are considered in the aggregate, the immensity and complexity of a rural access-to-justice crisis begins to come into focus. As a reflection of these immense challenges facing many rural people, data regarding the dearth of lawyers in many rural communities—and the complete absence of them from others—are cause for alarm.<sup>29</sup> More alarming still is all that we do *not* know.<sup>30</sup> Relatively little data has been collected about the access to justice crisis in rural America,<sup>31</sup> which means that rare attempts to address the problem have sometimes been devised in response to scant or vague evidence.

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the country but are home to more than 80 percent of the population. Conversely, 97 percent of the country’s land mass is rural but only 19.3 percent of the population lives there.” *One in Five Americans Live in Rural Areas*, U.S. CENSUS BUREAU (Aug. 2017), <https://www.census.gov/library/stories/2017/08/rural-america.html> [https://perma.cc/H72M-3H9X].

<sup>26</sup> According to a 2004 analysis, 60 percent of rural counties have access to public transit, including 28 percent of rural counties with only limited access; this means 40 percent of rural residents have no access to public transit. Dennis Brown & Eileen Stommes, *Rural Governments Face Public Transportation Challenges and Opportunities*, U.S. DEP’T AGRIC., ECON. RESEARCH SERV. (Feb. 1, 2004), <https://www.ers.usda.gov/amber-waves/2004/february/rural-governments-face-public-transportation-challenges-and-opportunities/> [https://perma.cc/32JW-X2DP].

<sup>27</sup> See, e.g., Jennifer Levitz & Valerie Bauerlein, *Rural America is Stranded in the Dial-Up Age*, WALL ST. J. (June 15, 2017), <https://www.wsj.com/articles/rural-america-is-stranded-in-the-dial-up-age-1497535841> [https://perma.cc/EGT2-UBUQ] (reporting that 39% of rural Americans—23 million people—lack access to broadband, compared to just 4% of urban residents). Many people without internet access rely on their smartphones for access to the internet, which poses problems when data is limited or websites are not formatted for mobile readability. See, e.g., Linda Boon, *Could You Live Entirely on Mobile Internet? Try It for a Day*, CITYLAB (May 21, 2018), <https://www.citylab.com/equity/2018/01/mobile-only-challenge-fcc-broadband-definition/550202/> (reporting that 23 million Americans rely on their smartphones as their only avenue to the internet and highlighting the limitations of smartphone-only internet access, including phone storage capacity, data limits, and functionality for typing or running certain programs). Even cell phone service as a means to rural internet connectivity is not a given, and in some cases is being taken away. Last year, Verizon sent termination letters to hundreds of rural residents across the country, terminating their coverage and citing an abundance of roaming charges on their accounts as the reason. See Kristen Inbody, *Verizon’s nixing some cell service in rural Montana has locals scared about emergencies*, USA TODAY (Sept. 17, 2017, 1:54 PM), <https://www.usatoday.com/story/tech/2017/09/17/verizons-nixing-some-cell-service-rural-montana-has-locals-scared-emergencies/674986001/> [https://perma.cc/9S36-HMCH].

<sup>28</sup> Runge, *supra* note 22. See also Lexye Shockley, *Regulating Boss Hogg – Citizen Empowerment and Rural Government Accountability* 4 SAVANNAH L. REV. 1 (2017); Lisa Pruitt, *Small-town “justice” run amok?* LEGAL RURALISM BLOG (Feb. 14, 2010), <http://legalruralism.blogspot.com/2010/02/small-town-justice-run-amok.html> (reporting one of a series of blog posts on the lack of checks and balances on local governments in rural areas).

<sup>29</sup> See, e.g., Lisa R. Pruitt, J. Cliff McKinney & Bart Calhoun, *Justice in the Hinterlands: Arkansas as a Case Study for the Rural Lawyer Shortage and Evidence-Based Solutions to Alleviate It*, 37 U. ARK. LITTLE ROCK L.J. 573, 581–82 (2015).

<sup>30</sup> This issue is not new; the need for data on the legal needs of the rural poor was discussed in a Duke University study from nearly 50 years ago, in which a survey study was conducted in one North Carolina county in order to investigate “the kinds of problems, methods of resolution, utilization of services and the perception of legal or other remedies common to the rural poverty group.” Many of the sentiments of that article and findings of the survey study still ring true today. See generally *Legal Problems of the Rural Poor*, 3 DUKE L.J. 495 (1969).

<sup>31</sup> Pruitt & Showman, *supra* note 1822, at 466, 494. But see THE JUSTICE GAP, *supra* note 9.



One goal of this article is to provide a body of state-specific data, to the extent such data are available, to foster a better understanding of rural access to justice challenges. We also look at policy interventions in the surveyed states. Our primary goal, however, is to provide such data and perspectives across a range of states so that a more comprehensive understanding of rural access to justice is achieved through this multi-state comparison. In turn, these data can inform remediation strategies designed to ameliorate the barriers to justice we identify.

Admittedly, the value of our state surveys for comparative purposes is somewhat limited by state-to-state inconsistencies among the data available and our varied means of collecting it. One particular complication to our analysis is that multiple definitions of “rural” are employed across the various and specific states and data we survey. In short, the federal government supports two main definitions of “rural,” as well as many lesser-known, less-used variants.<sup>32</sup> One of those definitions of “rural” comes from the U.S. Census Bureau<sup>33</sup> while the other (“nonmetro,” which is a county-level designation often used synonymously with “rural”) is promulgated by the Office of Management and Budget (OMB).<sup>34</sup> The inconsistencies between these two definitions are staggering: in fact, a large portion of the rural population as defined by the Census Bureau actually falls *outside* of nonmetro counties.<sup>35</sup> That is, many “rural” places are within metropolitan counties.

The United States Department of Agriculture’s (USDA) Economic Research Service (ERS),<sup>36</sup> which analyzes and publishes a great deal of rural data, frequently employs the arguably under-inclusive<sup>37</sup> OMB definition of “nonmetro.”<sup>38</sup> This means that the rural problems being studied and written about may be even more widespread than some data and analysis suggest.<sup>39</sup> Moreover, because these “rural” definitions

<sup>32</sup> See *Defining Rural Population*, HEALTH RES. & SERV. ADMIN., <https://www.hrsa.gov/rural-health/about-us/definition/index.html> (last reviewed Jan. 2017) [<https://perma.cc/72NW-QD2X>].

<sup>33</sup> The U.S. Census Bureau defines rural as “any population, housing, or territory not in an urban area.” See *How Does the U.S. Census Bureau Define Rural?*, U.S. CENSUS BUREAU, <https://storymaps.geo.census.gov/arcgis/apps/MapSeries/index.html?appid=9e459da9327b4c7e9a1248cb65ad942a> [<https://perma.cc/TT9C-J6JF>]. Rural journalist Bill Bishop combines the populations of “unincorporated areas” and “urban clusters” (which are small cities of 2,500 to 50,000 people), as defined by the U.S. Census Bureau, to capture the population considered “rural.” See Bill Bishop, *The States of Rural America*, THE DAILY YONDER (Apr. 3, 2012), <http://www.dailyyonder.com/how-rural-are-states/2012/04/03/3847/> [<https://perma.cc/QX5H-UQ89>].

<sup>34</sup> See *How Does the U.S. Census Bureau Define Rural?*, *supra* note 33.

<sup>35</sup> See *id.* “‘Nonmetro’ is not synonymous with rural. Metropolitan Statistical Areas or ‘metro’ areas are defined at the county level, and most counties have a mix of urban and rural areas. In fact, according to the latest American Community Survey (ACS), 54.4 percent of people living in rural areas are within a metro area.” *How Does the U.S. Census Bureau Define Rural?*, *supra* note 33.

<sup>36</sup> “ERS researchers and others who analyze conditions in “rural” America most often use data on nonmetropolitan (nonmetro) areas.” *What is Rural?*, U.S. DEP’T AGRIC., ECON. RESEARCH SERV., <https://www.ers.usda.gov/topics/rural-economy-population/rural-classifications/what-is-rural.aspx> (last updated May 1, 2017) [<https://perma.cc/AE8T-GXG5>].

<sup>37</sup> “There are measurement challenges with both the Census and OMB definitions. Some policy experts note that the Census definition classifies quite a bit of suburban area as rural. The OMB definition includes rural areas in Metropolitan counties including, for example, the Grand Canyon which is located in a Metro county. Consequently, one could argue that the Census Bureau standard includes an over-count of the rural population whereas the OMB standard represents an undercount.” *Defining Rural Population*, *supra* note 33.

<sup>38</sup> “There are measurement challenges with both the Census and OMB definitions. Some policy experts note that the Census definition classifies quite a bit of suburban area as rural. The OMB definition includes rural areas in Metropolitan counties including, for example, the Grand Canyon which is located in a Metro county. Consequently, one could argue that the Census Bureau standard includes an over-count of the rural population whereas the OMB standard represents an undercount.” *Supra* note 37 (last visited Jan. 16, 2018). See also U.S. DEP’T AGRIC., ECON. RESEARCH SERV., *RURAL AMERICA AT A GLANCE 2017* (reporting that the amount of rural territory within metropolitan counties has increased in recent decades); Daniel T. Lichter and James P. Ziliak, *The Rural-Urban Interface: New Patterns of Spatial Interdependence and Inequality in America* 672 ANNALS AAPSS 6, 8-9 (July 2017) (citing Wunderlich 2015).

<sup>39</sup> See William P. O’Hare, *2020 Census Face Challenges in Rural America*, U. N.H., CARSEY SCHOOL PUB. POL’Y (Winter 2017) (noting particular challenges to the 2020 census count in rural areas, including reliance on the Internet and technology in areas that are under-resourced in those areas).

matter for purposes of eligibility for various federal grants and programs,<sup>40</sup> inconsistencies and undercounting have direct and material consequences for residents of these areas.<sup>41</sup>

To a great extent, our state profiles rely on data compiled by the individual states. This means that the definitions and standards of “rural” used throughout the article vary depending on the source of the data, sometimes resulting in the use of different definitions and standards for “rural,” even within an individual state survey. As a result, we attempt to specify the source and to cite, whenever possible, the standard employed. We recognize, however, that the statistics and qualitative data we have at our disposal do not tell the whole story.

Further, while much of our data, as well as our discussion, are at the scale of the county, we recognize that the county is not necessarily the optimal unit of analysis.<sup>42</sup> For instance, counties vary enormously in size, with counties in Western states typically far larger than those in Eastern states. The average size of one of California’s 58 counties is 2,822 square miles, while the average size of a Georgia county is just 374 square miles. [Table 7.] Even within a given state, county size can vary enormously. Maine’s largest county, Aroostook, is 6,671 square miles and thus on par with some of California’s largest counties, but its smallest county, Sagadahoc, is only 254 square miles.<sup>43</sup> In South Dakota, Pennington County is so vast, stretching 100 miles from east to west, that officials have re-visited the parameters of the state’s Rural Attorney Recruitment Program to account for the fact that attorneys are clustered at one end of the county,<sup>44</sup> leaving the other end an attorney desert. Of course, lawyers cross county boundaries (and sometimes state ones) while practicing law, but doing so can result in increased costs for clients.

“Rural” is not the only term used in various ways by government entities and across scholarly literature from a range of disciplines. Although the access to justice crisis in rural America extends to a need for lawyers who represent clients of various income levels, most of the data and analysis we offer relates to the “poor,” a term which is arguably as hard to define as “rural.” The federal government defines “poverty” based on income thresholds that take into account family size and family composition when evaluating household income.<sup>45</sup> LSC limits eligibility to individuals who fall beneath 125% of the federal poverty guidelines.<sup>46</sup> As with the term “rural,” the data we present use varying thresholds for who is deemed “poor,” as well as for who is considered “modest means,” “low-income,” the “working poor,”

<sup>40</sup> *What is Rural?*, RURAL HEALTH INFO. HUB, <https://www.ruralhealthinfo.org/topics/what-is-rural#why-definitions> [https://perma.cc/3XG7-3D95].

<sup>41</sup> *Id.*

<sup>42</sup> County-level metrics on attorney presence presume that that people will seek a lawyer near them, which is not always the case. See Jamie Baxter & Albert Yoon, *No Lawyer for a Hundred Miles: Mapping the New Geography of Access to Justice in Canada*, 52 OSGOODE HALL L.J. 9 (2014). It is important to remember, however, that rural people—especially low-income rural people—may not have the means to travel any considerable distance to meet with a lawyer or, indeed, get to court.

<sup>43</sup> Indeed, Aroostook competes with St. Louis County, Minnesota—home of Duluth and part of Minnesota’s northland—for the largest county east of the Mississippi. See *Quick Facts: St. Louis County, Minnesota; Aroostook County, Maine*, U.S. Census Bureau (2010), <https://www.census.gov/quickfacts/fact/table/stlouiscountyminnesota,aroostookcountymaine,US/LND110210>.

<sup>44</sup> See *infra* Policy Efforts to Confront Justice Challenges: Project Rural Practice.

<sup>45</sup> *How the Census Bureau Measures Poverty*, U.S. CENSUS BUREAU (Aug. 11, 2017), <https://www.census.gov/topics/income-poverty/poverty/guidance/poverty-measures.html> The way we measure poverty nationally has historically been through a calculation known as the “official poverty rate,” which was developed in 1963 and is based on a 1955 study indicating that a family of three or larger spent one-third of their after-tax income on food. This metric, only updated annually for inflation since originally created, has been largely supplanted by the Supplemental Poverty Measure, which takes into account cash as well as non-cash benefits (the latter including benefits such as food stamps and subsidized school lunches and housing assistance), taxes, and the subtraction of other necessary life expenses, with an adjustment for cost of living based on region. See, e.g., Francine Lipman, *(Anti)Poverty Measures Exposed*, 21 FLA. TAX REV. 389, 398-401, 416-19 (2017); Anupama Jacob, *The Supplemental Poverty Measure: A Better Measure for Poverty in America?*, CENTER FOR POVERTY RESEARCH-UNIVERSITY OF CALIFORNIA, DAVIS, <https://poverty.ucdavis.edu/policy-brief/supplemental-poverty-measure-better-measure-poverty-america> (last visited Apr. 22, 2018); Joseph Dalaker, *An Introduction to Poverty Measurement*, CONGRESSIONAL RESEARCH SERVICE, <https://maximinlaw.wordpress.com/2018/04/19/crs-report-an-introduction-to-poverty-measurement-2017/> (last visited April 22, 2018).

<sup>46</sup> See *What is Legal Aid?*, LEGAL SERVS. CORP., <https://www.lsc.gov/what-legal-aid> [https://perma.cc/2JWW-QS3P]. In 2017, this threshold equals \$15,075 for individuals and \$30,750 for a family of four. *Quick Facts*, LEGAL SERVS. CORP., <https://www.lsc.gov/quick-facts> [https://perma.cc/C7CL-382P].

“income eligible,” and “indigent,” depending on the state and data specified.<sup>47</sup> Again, we attempt to provide definitions where these terms have been quantified and/or defined.

Notwithstanding a lack of consistent and reliable data regarding rural access to justice—and in some ways because of it—this article surveys current access to justice issues, challenges, and strategies in the rural areas of several states, representing geographic diversity spanning from West Coast to the East Coast, and from the Deep South to the Canadian border. These states were chosen for their spatial, economic, and population variations.<sup>48</sup> Just as significantly, we chose them because we knew of efforts underway in these states to study and address rural issues. We ordered the state surveys from least rural state to most rural state as defined by USDA ERS state-level data, with the threshold between rural and urban being population clusters of 2,500 people.<sup>49</sup> By that metric, using 2016 data (the most recent USDA ERS has used for this calculation), California is 2.1% rural; Georgia, 17.2%; Minnesota, 22.4%; Wisconsin, 25.9%<sup>50</sup>; Maine, 40.8%; and South Dakota, 51.9% rural.<sup>51</sup>

TABLE 1: RURAL POPULATION BY STATE (2016)

	California	Georgia	Minnesota	Wisconsin	Maine	South Dakota
<b>Rural</b>	832,574	1,778,123	1,237,572	1,499,467	542,697	449,130
% of Total	2.1%	17.2%	22.4%	25.9%	40.8%	51.9%
<b>Urban</b>	38,417,443	8,532,248	4,282,380	4,279,241	788,782	416,324
% of Total	97.9%	82.8%	77.6%	74.1%	59.2%	48.1%
<b>Total</b>	39,250,017	10,310,371	5,519,952	5,778,708	1,331,479	865,454

<sup>47</sup> By way of example, the Report, *Improving Civil Justice in Rural California* referred to indigent populations, as well as to low-income, modest-means and LSC-eligible populations. IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA, *supra* note 55, at 7-9. The California attorney data analyzed below considered those living below the poverty line, those living at 200% of poverty line, and those aged 65 and older. Meeker Data, *infra* note 97.

<sup>48</sup> Because the surveys of Minnesota and Wisconsin were written by the same author and are heavily compared and contrasted, those two regions are clustered together in one section.

<sup>49</sup> See *Rural Definitions*, USDA ERS, <https://www.ers.usda.gov/data-products/rural-definitions/rural-definitions/#Data%20sources%20from%20the%20U.S.%20Census%20Bureau> (last visited June 3, 2018).

<sup>50</sup> The rural socioeconomic and spatial landscapes of northeastern Minnesota and northern Wisconsin largely resemble one another more prominently than they do their respective states' metropolitan and southern (and in the case of Minnesota, western) areas. Looking at this region as a whole allows us to comparatively evaluate how state political structures and funding mechanisms, attorney and judge shortages, the greying bar, and area law schools variously impact rural access to justice.

<sup>51</sup> Table 1 (citing to USDA ERS State Profiles; full cite embedded in Table).

TABLE 2: LAWYER PRESENCE BY STATE (2016)

	California	Georgia	Minnesota	Wisconsin	Maine	South Dakota
<b>Total Population</b>	39,250,017	10,310,371	5,519,952	5,778,708	1,331,479	865,454
<b>Total Housing Units*</b>	13,911,737	4,156,518	2,382,855	2,649,597	727,127	375,866
<b>Number of Active Lawyers</b>	167,690	31,499	24,952	15,072	3,931	1,960
<b>Households per Lawyer</b>	83	132	95	176	185	192
<b>Residents per Lawyer</b>	234	327	221	383	339	442

TABLE 3: RURAL AND URBAN POVERTY RATES BY STATE (2016)

	California	Georgia	Minnesota	Wisconsin	Maine	South Dakota
<b>State Average</b>	14.3%	16.0%	9.9%	11.8%	12.5%	13.3%
<b>Rural</b>	17.1%	22.1%	11.2%	11.3%	15.1%	15.3%
<b>Urban</b>	14.3%	14.7%	9.5%	11.9%	10.7%	11.0%
<b>Difference</b>	2.8%	7.4%	1.7%	-0.6%	4.4%	4.3%

TABLE 4: RURAL AND URBAN PER-CAPITA INCOME BY STATE (2016)

	California	Georgia	Minnesota	Wisconsin	Maine	South Dakota
<b>State Average</b>	\$56,374	\$42,159	\$52,038	\$46,762	\$44,053	\$47,834
<b>Rural</b>	\$44,673	\$31,841	\$43,460	\$41,689	\$40,306	\$43,266
<b>Urban</b>	\$56,628	\$44,310	\$54,517	\$48,540	\$46,631	\$52,762
<b>Difference</b>	-\$11,955	-\$12,469	-\$11,057	-\$6,851	-\$6,325	-\$9,496
<b>Rural as a % of Urban</b>	79%	72%	80%	86%	86%	82%

TABLE 5: RURAL AND URBAN UNEMPLOYMENT RATE BY STATE (2016)

	California	Georgia	Minnesota	Wisconsin	Maine	South Dakota
<b>State Avg.</b>	5.4%	5.4%	3.9%	4.1%	3.9%	2.8%
<b>Rural</b>	6.3%	6.0%	4.7%	4.5%	4.6%	3.1%
<b>Urban</b>	5.4%	5.3%	3.7%	4.0%	3.4%	2.6%
<b>Difference Between Rural and Urban</b>	0.9%	0.7%	1.0%	0.5%	1.2%	0.5%

TABLE 6: RURAL AND URBAN EDUCATION LEVEL BY STATE  
(% OF PERSONS 25 AND OLDER) (2012-2016)

	Level of Completion	State Avg.	Rural	Urban	Difference
<b>CA</b>	Not completing high school	17.9%	12.8%	1.8%	11.0%
	Completing high school only	20.6%	26.2%	20.5%	5.7%
	Completing some college	29.5%	38.5%	29.3%	9.2%
	Completing college	32.0%	22.5%	32.2%	-9.7%
<b>GA</b>	Not completing high school	14.2%	20.1%	12.9%	7.2%
	Completing high school only	28.1%	37.5%	26.0%	11.5%
	Completing some college	28.3%	26.7%	28.7%	-2.0%
	Completing college	29.4%	15.7%	32.4%	-16.7%
<b>MN</b>	Not completing high school	7.4%	9.2%	6.8%	2.4%
	Completing high school only	25.7%	33.9%	23.2%	10.7%
	Completing some college	32.7%	35.6%	31.8%	3.8%
	Completing college	34.2%	21.2%	38.2%	-17.0%
<b>WI</b>	Not completing high school	8.6%	9.5%	8.3%	1.2%
	Completing high school only	31.7%	38.5%	29.2%	9.3%
	Completing some college	31.3%	31.8%	31.1%	0.7%
	Completing college	28.4%	20.2%	31.4%	-11.2%
<b>ME</b>	Not completing high school	8.1%	9.1%	7.4%	1.7%
	Completing high school only	33.2%	37.2%	30.2%	7.0%
	Completing some college	29.4%	29.7%	29.3%	0.4%
	Completing college	29.3%	24.0%	33.1%	-9.1%
<b>SD</b>	Not completing high school	8.8%	9.9%	7.6%	2.3%
	Completing high school only	30.8%	33.6%	27.9%	5.7%
	Completing some college	32.9%	31.7%	34.2%	-2.5%
	Completing college	27.5%	24.7%	30.4%	-5.7%

TABLE 7: COUNTY PROFILES WITHIN STATES

	Number of Counties*	Avg. Population per County*	Number of Counties with Population Below 10K*	Number of Counties with Population Below 50K*	Total State Area in Square Miles*	Avg. County Area in Square Miles*	Avg. Housing Units per County*	Avg. Density per Square Mile of Land Area*	
								Population	Housing Units
California	58	642,310	3	15	163,695	2,822	235,863	663	275
Georgia	159	60,929	79	121	59,425	374	45,114	91	48
Minnesota	87	60,965	19	68	86,934	999	26,979	131	56
Wisconsin	72	78,986	5	44	65,496	910	25,716	194	81
Maine	16	83,023	0	7	35,380	2,211	36,449	165	74
South Dakota	66	12,336	48	64	77,116	1,168	5,507	14	6

Each author has relied upon her own expertise, areas of interest, and available data to complete her state survey(s). We have drawn from many sources in compiling our work, including, at times, local media and in-person interviews. The richness of these qualitative data reflect another characteristic associated with rural America: the great value placed on interpersonal relationships. Such relationships can be a double-edged sword: a benefit when cultivated in the mentor-mentee interactions inherent in South Dakota’s Rural Attorney Recruitment Program,<sup>52</sup> for example, but a challenge when attorneys must learn the idiosyncrasies of remote regional courts in northern Wisconsin in order to advocate effectively for their clients.<sup>53</sup>

Part I of this article presents a survey of rural access to justice in the six states. Each state survey typically begins with a discussion of the state’s institutional framework and political landscape, followed by that state’s policy responses to rural justice deficits. Most of the state profiles then discuss the role that law schools play in addressing legal needs in the state’s rural areas. Table 8 provides data on law school tuition costs across the states surveyed, information that appears to be highly relevant to the rural lawyer shortage for reasons discussed below.

TABLE 8: AVERAGE LAW SCHOOL TUITION PER YEAR, BY STATE

	CA	GA	ME	MN	WI	SD
<b>Average Annual Law School Tuition at ABA-AALS Accredited Schools</b>	\$49,558	\$29,608	\$22,290	\$35,331	\$34,332	\$15,688
<b>Average Annual Law School Tuition at Cal-Accredited Law Schools</b>	\$21,903					
<b>Average Annual Tuition at Unaccredited Schools: distance learning, fixed facility, and correspondence</b>	\$10,000					

Part II explores some of the themes and commonalities that emerge from the collection of state surveys, including rural-urban disparities in legal aid funding; how race intersects with poverty and

<sup>52</sup> *Rural Attorney Recruitment Program*, S.D. UNIFIED JUDICIAL SYS., <http://www.uj.s.sd.gov/Information/rarprogram.aspx> [https://perma.cc/CS6M-K5N5]. See also *infra* Policy Efforts to Confront Justice Challenges: Project Rural Practice (discussing how mentor attorneys are assigned to participating attorneys in the Rural Attorney Recruitment Program).

<sup>53</sup> See *infra* Northern Wisconsin (discussing the difficulties of non-local counsel practicing in Wisconsin’s northern counties).

access; rural attorney shortages, including specifically, the attrition of aging rural attorneys and the dearth of replacements; and measures states have taken to offset attrition. Though the most obvious metric for measuring rural access to justice is the number of attorneys who practice in a given area (and thus attorney numbers will be a topic of great discussion in this article), Part II examines common barriers to rural access beyond attorney shortages and surveys stakeholder efforts to increase rural access to legal services. That Part ends with a discussion of the implications of state politics for access to justice efforts.

In Part III, we introduce a new framework for addressing the rural access to justice crisis. The first piece of the framework relates to collecting and analyzing data about the needs and highlights the challenges associated with comparing data across states. Part III then discusses the need to carefully tailor rural access to justice initiatives to the settings in which they are to be deployed, as well as the importance of networking resources to respond to particular populations and legal needs. Part III also discusses the limits and promise of legal aid in rural settings. The final sections of Part III focus on ways in which a shifting legal market can be leveraged to create incentives for lawyers to enter rural practice, and it discusses the critical role of law schools in bridging rural-urban justice gaps. The article then concludes with reflections on the positive change that can result from a more thoughtful and tailored approach to realizing access to justice for rural Americans.

## I. STATE SURVEYS

### A. *California*

California, the most populous U.S. state with more than 39 million residents,<sup>54</sup> is rarely thought of as rural. But California is not only populous; it is vast. The third largest state in the nation, California covers nearly 156,000 square miles. The state is divided into 58 counties with an average size that is twice as large as the entire state of Rhode Island.<sup>55</sup> It should thus come as no surprise that rural pockets dot every region of the Golden State, with the central, far northern, and eastern parts in particular featuring considerable stretches that are sparsely populated.<sup>56</sup> Drawing attention to the needs of rural residents—less than a million Californians under the U.S. Census Bureau definition—can be especially challenging in the context of an urban-centric population behemoth like California.<sup>57</sup> Still, rural Californians outnumber the entire population of a few states and are almost as many as the entire population of South Dakota,<sup>58</sup> for example. Clearly, their legal needs are worthy of attention.

California is already a “majority minority” state. Nearly 40% of the population is Latinx,<sup>59</sup> and that population is about as well represented in rural places as in urban ones. In 2010, 36.4% of the state’s rural and small-town population was Latinx.<sup>60</sup> Given this long-standing and high degree of racial and ethnic

<sup>54</sup> *Quick Facts*, U.S. CENSUS BUREAU (2010), <https://www.census.gov/quickfacts/fact/table/US/PST045216> [<https://perma.cc/H3BG-BXRF>] (type “California” in search bar and select Population Estimates, July 1, 2016 from “Select a fact” menu).

<sup>55</sup> The average size of a California county is 2,822 square miles. Table 7. The executive summary of *Improving Civil Justice in Rural California* gave context to the state’s vastness and rurality by noting that if the 76% of the state’s land area—124,800 square miles—were its own state, it would be the fourth largest state in the nation. CAL. COMM’N ON ACCESS TO JUSTICE, *IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA* 6 (Sept. 2010) [hereinafter *IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA*], [http://www.calbar.ca.gov/Portals/0/documents/accessJustice/CCAJ\\_2010\\_FINAL\\_2.pdf?ver=2017-05-19-133105-073](http://www.calbar.ca.gov/Portals/0/documents/accessJustice/CCAJ_2010_FINAL_2.pdf?ver=2017-05-19-133105-073) [<https://perma.cc/JSX5-MCWE>].

<sup>56</sup> See Map 4; Table 9.

<sup>57</sup> The rural population of California is 832,574. See Table 1.

<sup>58</sup> See Table 1.

<sup>59</sup> *Quick Facts*, *supra* note 54 (type “California” in search bar, select Population Estimates, July 1, 2016 from “Select a fact” menu, and select “Race and Hispanic Origin”). About 15% is Asian American; 6.5% is African American; and 3.8% self-identify as two or more races. Fewer than 38% identify as white alone. *Id.*

<sup>60</sup> HOUS. ASSISTANCE COUNCIL, *RACE & ETHNICITY IN RURAL AMERICA* 10 (Apr. 2012), [hereinafter *RACE & ETHNICITY IN RURAL AMERICA*], [http://www.ruralhome.org/storage/research\\_notes/rn-race-and-ethnicity-web.pdf](http://www.ruralhome.org/storage/research_notes/rn-race-and-ethnicity-web.pdf) [<https://perma.cc/3SGZ-TPK2>] (also reporting that Asian Americans are 2.6% of the rural and small-town population in California). The Housing Assistance Council designates three general classifications of housing density: 1. Small town and rural tracts (64 housing units per square mile and below); 2. Suburban and exurban tracts (65 to 1,600 housing units per square mile); and 3. Urban tracts (more than

diversity, California’s situation as a “gateway” state for immigration,<sup>61</sup> and the population churn associated with agricultural labor,<sup>62</sup> it should come as no surprise that the need for legal services related to immigration gets a great deal of attention in the access to justice sector, including among those focused on rural access.<sup>63</sup>

But rural California is diverse beyond its well-known Latinx population: 2.5% of the state’s rural and small-town population are Asian; 2.6% are African American, and 2.2% are bi- or multi-racial.<sup>64</sup> It is a little-known fact that more Native Americans (representing some 60 different tribes) live in California than in any other state.<sup>65</sup> While they constitute just 1.5% of the state’s rural and small-town population,<sup>66</sup> more than 63,000 California residents are Native American, and they often live in the state’s most remote reaches.<sup>67</sup>

This California profile, the most reliant on quantitative data among the six state surveys, is devoted primarily to a discussion of where the state is experiencing attorney deserts. As a complement to that discussion, this survey reveals where the state’s lawyers are concentrated and hypothesizes some reasons for this dramatically uneven distribution. Before turning to that data, the next section considers California’s institutional framework related to access to justice, with particular attention to rural issues. Following the presentation of the attorney data is a discussion of the state’s meager policy interventions to date. Finally, this survey takes up California’s massive legal education sector, with particular attention to high tuition at ABA-AALS Accredited schools, high rates of law graduate debt, and the promise of so-called Cal-accredited law schools in addressing the rural lawyer shortage.

### 1. Institutional Framework and Political Landscape

In spite of California’s relatively small rural population, the state has been on the vanguard of awareness about access to justice in the rural context. In 2010, the California Commission on Access to Justice (CCATJ) published *Improving Civil Justice in Rural California*, a comprehensive 72-page report that quickly became a standard-bearer on the topic.<sup>68</sup> The Commission’s Rural Access Task Force, which was responsible for drafting the publication, still operates as a standing committee of the CCATJ to study, draw awareness to, and advocate for better legal access for rural Californians.<sup>69</sup>

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1,600 housing units per square mile). See *Defining Rural - Geographic Terms and Concepts*, HOUSING ASSISTANCE COUNCIL: THE RURAL DATA PORTAL, <http://www.ruraldataportal.org/geoterms.aspx> [<https://perma.cc/3GNS-GCBN>]. The Housing Assistance Council defines “rural and small towns” as areas with a low population density, small settlements, and a low level of racial and ethnic diversity.

<sup>61</sup> See Ilene J. Jacobs & Patrick Saldaña, *Farmworker Homelessness in Imperial County, CA*, 21 RURAL VOICES 14, 14-15 (2016), <http://www.ruralhome.org/storage/documents/rural-voices/rvmarch2016.pdf> (estimating that there are anywhere between 386,725 and 1 million agricultural workers in CA, with between 5,501 and 8,000 in Imperial County alone); Jacqueline Villarrubia and Nancy A. Denton, Paper, *Gateway State, Not Gateway City: New Immigrants in the Hudson Valley*, PRINCETON UNIVERSITY, <http://paa2007.princeton.edu/papers/70987> (last visited May 4, 2018); Olivia Winslow, *Census: Under-35 Immigrants Most Populous in “Gateway” States*, NEWSDAY (Feb. 26, 2014), <https://www.newsday.com/news/nation/census-under-35-immigrants-most-populous-in-gateway-states-1.7220206> (“California’s agricultural industry is bigger than ever. It produces roughly a third of all fruits and vegetables grown in the United States and has about a third of the nation’s farmworkers.”).

<sup>62</sup> See Mike McPhate, *California Today: The Collapse of Organized Farm Labor*, N.Y. TIMES (Feb. 2, 2017), <https://www.nytimes.com/2017/02/02/us/california-today-farmworker-unions.html>.

<sup>63</sup> See Pruitt & Williams, *infra* note 152. See also *infra* note 211 (describing UCOP Central Valley Fellowship).

<sup>64</sup> RACE & ETHNICITY IN RURAL AMERICA, *supra* note 60, at 10.

<sup>65</sup> IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA, *supra* note 55, at 9.

<sup>66</sup> RACE & ETHNICITY IN RURAL AMERICA, *supra* note 60, at 10.

<sup>67</sup> IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA, *supra* note 55, at 9.

<sup>68</sup> *Id.* at 6. This report was published under the leadership of Justice Ronald Robie, then chair of the Commission.

<sup>69</sup> See California Commission on Access to Justice, California Bar (Feb. 11, 2016), [http://www.calbarjournal.com/portals/0/documents/accessJustice/ATJ%20Planning%20Meeting%20-%202002-11-2016%20-%20Final%20Summary\\_to%20post.pdf](http://www.calbarjournal.com/portals/0/documents/accessJustice/ATJ%20Planning%20Meeting%20-%202002-11-2016%20-%20Final%20Summary_to%20post.pdf).



The 2010 Report on *Improving Civil Justice in Rural California* asserted that “at least one third of low-income rural people need legal services for basic human needs.”<sup>70</sup> In a list not intended to be exhaustive, the Report enumerated seven legal issues facing low-income rural Californians: housing (including both foreclosures and migrant housing); labor violations; domestic violence; access to health care services; legal problems facing the elderly and persons with disabilities; language assistance; and tribal peoples.<sup>71</sup> One goal set by the Report was “statewide parity in funding” of legal aid and a “minimum level of access for every region of the state,” an issue revisited in Part I.a.iii.<sup>72</sup>

Not surprisingly, the legal aid framework in California matches the state in terms of size and complexity. Ninety-seven legal aid organizations—including 75 that deliver direct legal services—shared a budget of more than \$350 million in 2016.<sup>73</sup> At \$45 million, Legal Services Corporation (LSC) funding is the single largest component of the budget.<sup>74</sup> Nevertheless, LSC monies are dwarfed by the aggregate contributions of a number of private foundations, which total about \$80 million.<sup>75</sup> Law firms donated about \$25 million, while individual lawyers donated an additional \$14 million.<sup>76</sup> Numerous other sources comprise the remaining legal aid budget, including, for example, agricultural and disaster relief grants from both state and federal sources.<sup>77</sup>

The State Bar of California has responsibility for distributing two significant funding streams: The Equal Access Fund (EAF) and the Interest Lawyer Trust Accounts (IOLTA) revenue from attorney trust accounts. The Equal Access Fund, currently \$25 million,<sup>78</sup> includes about \$5 million generated from filing fees and \$20 million in general fund support from the California legislature. The latter flows through the judicial branch and then via the State Bar to legal aid organizations.<sup>79</sup> The State Bar also administers some \$14 million in IOLTA funds.<sup>80</sup> Of those, only about \$6 million is interest revenue. Another component of the IOLTA fund is The Justice Gap Fund, \$1.3 million in 2016 and comprised of individual contributions, residual funds, and *cypres*.<sup>81</sup> A major source of individual contributions is associated with collecting bar dues. Attorneys must “opt out” if they do not wish to make a \$40 contribution when they pay their bar dues, and they can “opt in” to contribute an additional \$100 to this fund.<sup>82</sup>

<sup>70</sup> IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA, *supra* note 55 (citing Larry R. Spain, *Public Interest Law: Improving Access to Justice: The Opportunities and Challenges of Providing Equal Access to Justice in Rural Communities*, 28 WM. MITCHELL L. REV. 367, 372 (2001)).

<sup>71</sup> *Id.* at 8–9.

<sup>72</sup> *Id.* at 5. The Report added what could be considered a caveat in relation to parity: “Since no legal aid program has adequate resources, initiatives to address the severe lack of resources in rural areas should be pursued in a way that does not necessarily undermine urban legal programs.” *Id.*

<sup>73</sup> Teleconference Interview with Salena Copeland, Exec. Dir. of Legal Aid Ass’n of Cal. (Mar. 16, 2018) [hereinafter Copeland Teleconference] (on file with Harvard Law School Library); E-mail from Salena Copeland, Exec. Dir., Legal Aid Ass’n of Cal., to Lisa R. Pruitt, Professor of Law, University of Cal., Davis (May 4, 2018 10:10 AM) [hereinafter Copeland E-mail I] (on file with Harvard Law School Library); *see also* CALIFORNIA CIVIL LEGAL AID REVENUE SOURCES AND DISTRIBUTIONS (Oct. 10, 2017) (on file with Harvard Law Library) [hereinafter CAL. LEGAL AID REVENUE SOURCES AND DISTRIBUTIONS].

<sup>74</sup> This includes \$43.5 million in direct legal services and about \$2 million in LSC grants for specific programs such as pro bono innovation and technology; *see also* CALIFORNIA CIVIL LEGAL AID REVENUE SOURCES AND DISTRIBUTIONS (Oct. 10, 2017) (on file with Harvard Law Library) [hereinafter CAL. LEGAL AID REVENUE SOURCES AND DISTRIBUTIONS].

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Copeland Teleconference, *supra* note 73.

<sup>78</sup> This includes \$15 million in base funding plus \$10 million in additional allocations in 2016, as well as in 2017. Copeland Teleconference, *supra* note 73. *See also* State Bar, *legal aid groups strategize on funding for equal access*, THE STATE BAR OF CAL. (Aug. 17, 2017), <http://www.calbar.ca.gov/About-Us/News-Events/California-Bar-Journal/Articles/state-bar-legal-aid-groups-strategize-on-funding-for-equal-access> [https://perma.cc/DB62-ATP5].

<sup>79</sup> Copeland E-mail I, *supra* note 73. *See also* State Bar, *Legal Aid Groups Strategize on Funding for Equal Access*, THE STATE BAR OF CAL.: NEWS HIGHLIGHTS (Aug. 17, 2017), <http://www.calbar.ca.gov/About-Us/News-Events/California-Bar-Journal/News-Highlights/state-bar-legal-aid-groups-strategize-on-funding-for-equal-access> [https://perma.cc/G8QL-URSU].

<sup>79</sup> Copeland Teleconference, *supra* note 73.

<sup>80</sup> Copeland Teleconference, *supra* note 73. This fund has decreased in recent years as interest rates have fallen.

<sup>81</sup> CAL. CIVIL LEGAL AID REVENUE SOURCES AND DISTRIBUTIONS, *supra* note 73; Copeland E-mail I, *supra* note 73.

<sup>82</sup> Copeland E-mail I, *supra* note 73.

Both IOLTA and the bulk of EAF monies are distributed pursuant to a formula similar to that used by the LSC to distribute funds to states.<sup>83</sup> The formula weighs most heavily the number of indigent people per county in determining how much money flows to each county.<sup>84</sup> Within a given county, funding favors larger organizations because it is distributed in proportion to the amount each organization has spent in the prior year “providing free legal services to the indigent.”<sup>85</sup> This means that, within a given county, the funding formula favors larger organizations.

In addition, the State Bar of California awards some grants, on a competitive basis, to fund specific programs. A U.S. Department of Justice settlement with Bank of America to “resolve federal and state claims for financial fraud leading up to and during the financial crisis” was a significant source of such funds for many states.<sup>86</sup> In California, the resulting \$45 million fund, the Bank Stabilization and Community Reinvestment Grants (“bank grants”), is earmarked for “foreclosure prevention legal services and community redevelopment legal services.”<sup>87</sup> Though only IOLTA-funded organizations are eligible for these bank grants, many recipients partner with non-IOLTA programs.<sup>88</sup> As another example, 10% of EAF funds are set aside for grants that encourage courts to partner with local legal aid programs to incubate new projects, with funding tapering off over time as the programs attract other funders.<sup>89</sup> According to Salena Copeland, Executive Director of the Legal Aid Association of California, the Legal Services Trust Fund Commission “looks favorably on rural partnership grants and lets them extend longer than others when the rural program is unable to find replacement funding.”<sup>90</sup>

The 2010 *Improving Civil Justice* Report revealed geographical disparities in legal aid funding, documenting the extent to which rural Californians get the short end of the stick.<sup>91</sup> In 2009, legal aid organizations serving poor people in rural counties spent just \$18.56 per poor resident,<sup>92</sup> compared to \$44.43 per poor resident in the state’s seven most urban counties.<sup>93</sup> In counties with mixed rural and urban populations,<sup>94</sup> the average expenditure was \$26.43 per poor resident.<sup>95</sup>

California’s overwhelmingly urban population is consistent with its reputation as one of the “bluest” of states. The urbanormativity of state institutions means that attracting political and institutional attention

<sup>83</sup> E-mail from Salena Copeland, Exec. Dir., Legal Aid Ass’n of Cal., to Lisa R. Pruitt, Professor of Law, Univ. of Cal., Davis (Mar. 27, 2018, 10:55 AM) (on file with Harvard Law Library) [hereinafter Copeland E-mail II]. Ninety percent of EAF funds are distributed pursuant to this formula, with the remainder distributed to courts for special projects. E-mail from Salena Copeland to Lisa Pruitt, March 19, 2018 (8:39 AM) (on file with Harvard Law School Library) [hereinafter Copeland E-mail III]. See also *IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA*, *supra* note 55, at 11 and Appendix D.

<sup>84</sup> *IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA*, *supra* note 55, at 11 and Appendix D.

<sup>85</sup> *Id.* See also Copeland Email II, *supra* note 83.

<sup>86</sup> CAL. STATE AUDITOR, THE STATE BAR OF CALIFORNIA: IT NEEDS ADDITIONAL REVISIONS TO ITS EXPENSE POLICIES TO ENSURE THAT IT USES FUNDS PRUDENTLY 8 (June 2017) <https://www.bsa.ca.gov/reports/2017-030/introduction.html> [<https://perma.cc/M53V-Y3FF>]. See also CAL. LEGAL AID REVENUE SOURCES AND DISTRIBUTIONS, *supra* note 73.

<sup>87</sup> CAL. LEGAL AID REVENUE SOURCES AND DISTRIBUTIONS, *supra* note 73; Copeland E-mail I, *supra* note 73.

<sup>88</sup> CAL. LEGAL AID REVENUE SOURCES AND DISTRIBUTIONS, *supra* note 73; Copeland E-mail 1, *supra* note 73. In 2017, the State Bar distributed \$7.37 million in bank grant funds. See *infra* notes 83–88 (regarding recipients of those funds). California is not the only state to receive such funds; among the states we surveyed, Georgia also received these funds.

<sup>89</sup> Copeland E-mail III, *supra* note 83 (March 19, 8:39 AM).

<sup>90</sup> Copeland E-mail III, *supra* note 83 (March 19, 8:39 AM).

<sup>91</sup> *IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA*, *supra* note 55, at 11 and Appendix D.

<sup>92</sup> For these purposes, the State Bar of California considers the following counties to be “rural”: Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, San Luis Obispo, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tuolumne, and Yuba; counties with mixed rural/urban populations are Butte, El Dorado, Fresno, Kern, Marin, Merced, Monterey, Napa, Placer, Riverside, San Bernardino, San Joaquin, San Mateo, Santa Barbara, Santa Cruz, Shasta, Solano, Sonoma, Stanislaus, Tulare, Tuolumne, Ventura and Yuba. Legal Services Funding per Indigent Person by Population Density Category (2015) (on file with Harvard Law Library) [hereinafter Legal Services Funding by Population Density].

<sup>93</sup> *IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA*, *supra* note 55, at 11 and Appendix A. The seven urban counties for these purposes are Alameda, Contra Costa, Los Angeles, Orange, Sacramento, San Francisco and Santa Clara. See Legal Services Funding by Population Density, *supra* note 92.

<sup>94</sup> For these purposes, the counties with mixed rural/urban populations are Butte, El Dorado, Fresno, Kern, Marin, Merced, Monterey, Napa, Placer, Riverside, San Bernardino, San Joaquin, San Mateo, Santa Barbara, Santa Cruz, Shasta, Solano, Sonoma, Stanislaus, Tulare, Tuolumne, Ventura and Yuba. Legal Services Funding by Population Density, *supra* note 92.

<sup>95</sup> *IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA*, *supra* note 55, at 11 and Appendix A.

to rural deficits can be difficult. The state’s metrocentric and left-leaning vibe also creates challenges for attracting and retaining lawyers in the state’s rural reaches, an issue addressed in Part I.a.iv.

## 2. *Where California Attorneys Are—and Are Not*

One aspect of California’s recent attention to rural access to justice has been an awareness of the diminishing number of rural attorneys. Mapping the presence (and absence) of attorneys across California thus became critical. This task was taken up in 2016 by Professor James W. Meeker of UC Irvine, an ex officio member of the CCATJ, and two graduate students.<sup>96</sup> Meeker’s team mapped 2016 attorney address data from the State Bar of California.<sup>97</sup> That data set included both active and inactive lawyers, which is why the total number of lawyers (192,226) differs so dramatically from the ABA data presented in Table 2.<sup>98</sup>

Meeker used a California classification scheme that divides the state into sub-county geographical units known as Medical Service Study Areas (MSSAs),<sup>99</sup> each of which is categorized as “rural,” “urban,” or “frontier.” MSSAs are clusters of Census tracts that respond to legislative mandates requiring the Office of Statewide Health and Development Planning (OSHDP) to determine “areas of unmet priority need for primary care family physicians.”<sup>100</sup> The California Commission on Access to Justice considered the MSSA scale an appropriate one for thinking about the rural lawyer shortage and the availability of other justice system services because the state’s many large counties are diverse in terms of the degree of development and population density. Even highly urbanized counties, e.g., Los Angeles County, are enormous by the standards of other states<sup>101</sup> and feature rural pockets.<sup>102</sup> Furthermore, it is logical that one should need to travel no farther to access legal services than one travels to access medical services.

Under the MSSA scheme, “urban” populations range from 75,000 to 125,000 people and reflect recognized community boundaries that share similar socio-economic and demographic characteristics.<sup>103</sup> “Rural” MSSAs have 50,000 or fewer residents and population densities below 250 people per square mile, while “frontier” MSSAs are defined by population densities of fewer than 11 people per square mile.<sup>104</sup>

Given California’s size and diversity, we divided the state into seven regions to facilitate analysis. The regions cluster counties based largely on economic and historical affinity, as well as similarities in physical geography. The regions are Southern California,<sup>105</sup> the Inland Empire,<sup>106</sup> the Central Valley,<sup>107</sup>

<sup>96</sup> These graduate students were Xiyue Wang and Carrie Reiling.

<sup>97</sup> These data on using attorney addresses are geocoded to correspond to MSSAs. The data are on file with Harvard Law Library. [hereinafter Meeker Data].

<sup>98</sup> E-mail from James W. Meeker, Professor of Criminology, Law and Soc’y, Univ. of Cal., Irvine to Lisa R. Pruitt, Professor of Law, Univ. of Cal., Davis (Mar. 19, 2018, 3:42 PM) (on file with Harvard Law School Library) (the data addresses used were those where attorneys receive statements for their bar dues, which presumably are work addresses).

<sup>99</sup> See *Medical Service Study Areas*, STATE OF CALIFORNIA: OFFICE OF STATE HEALTH PLANNING & DEV., <https://oshpd.ca.gov/MSSA/> [https://perma.cc/V5CR-TU6Q].

<sup>100</sup> *Id.* MSSAs were developed in 1976 by the California Healthcare Workforce Policy Commission (formerly California Health Manpower Policy Commission) to respond to legislative mandates requiring it to determine “areas of unmet priority need for primary care family physicians” (Song-Brown Act of 1973) and “geographical rural areas where unmet priority need for medical services exist” (Garamendi Rural Health Services Act of 1976). MSSAs are recognized by the U.S. Health Resources and Services Administration, BHW as rational service areas for purposes of designating Health Professional Shortage Areas (HPSAs), and Medically Underserved Areas and Medically Underserved Populations (MUAs/MUPs). The MSSAs incorporate the U.S. Census total population, socioeconomic and demographic data and are updated with each decadal census . . . Each MSSA is composed of one or more complete census tracts. MSSAs will not cross county lines. All population centers within the MSSA are within 30 minutes travel time to the largest population center).

<sup>101</sup> See Table 9.

<sup>102</sup> IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA, *supra* note 55, at 6.

<sup>103</sup> See *Medical Service Study Areas*, *supra* note 99.

<sup>104</sup> *Id.*

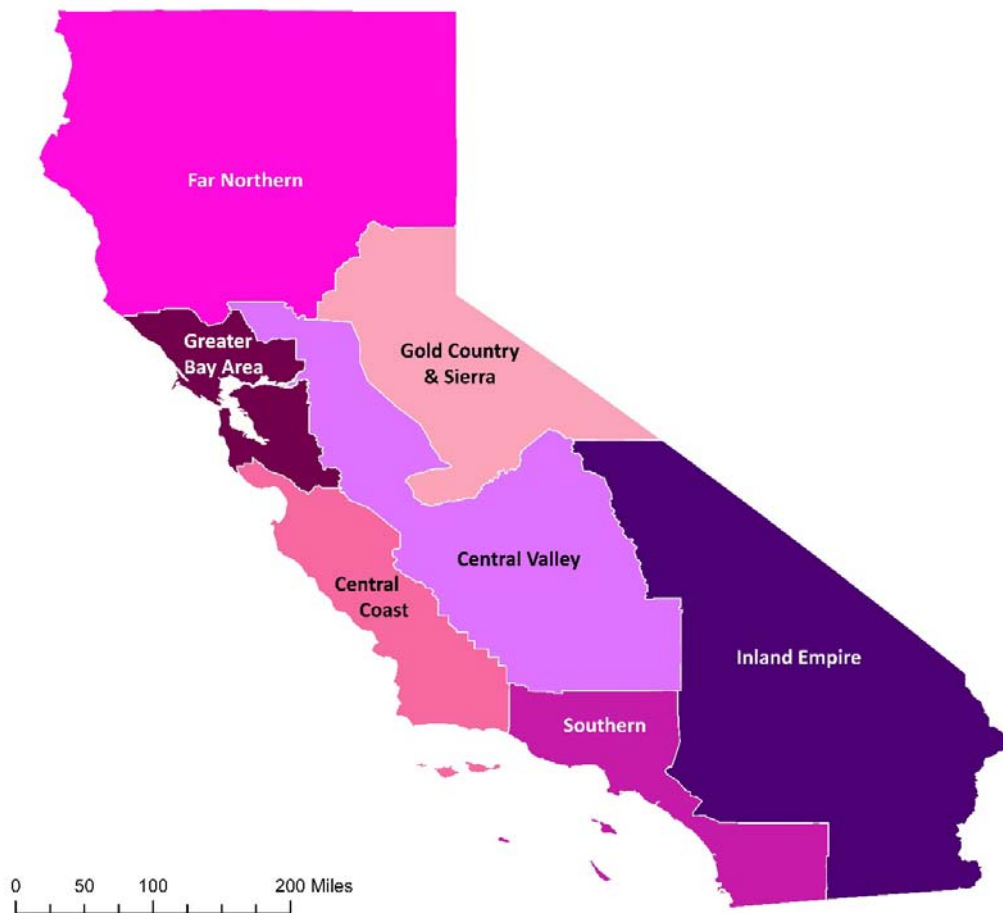
<sup>105</sup> The counties are Los Angeles, Orange, San Diego and Ventura.

<sup>106</sup> The counties are Imperial, Inyo, Riverside, and San Bernardino.

<sup>107</sup> The counties are Fresno, Kern, Kings, Merced, Sacramento, San Joaquin, Stanislaus, Tulare, and Yolo.

the Central Coast,<sup>108</sup> the Greater Bay Area,<sup>109</sup> the Gold Country/Sierra-Nevada,<sup>110</sup> and far Northern California (“Far North”),<sup>111</sup> as depicted in Map 1.

MAP 1: REGIONAL MAP OF CALIFORNIA



Meeker correlated the attorney data with U.S. Census Bureau data from the 2014 American Community Survey. Some of these data are presented in Table 2 and in Maps 2-5. While Table 9 and Maps 2 and 5 depict county-level data, Maps 3 and 4 depict data at the scale of the MSSA. Map 6 depicts each county’s poverty rate from the 2012-2016 U.S. Census Bureau American Community Survey, data also provided in Table 9.

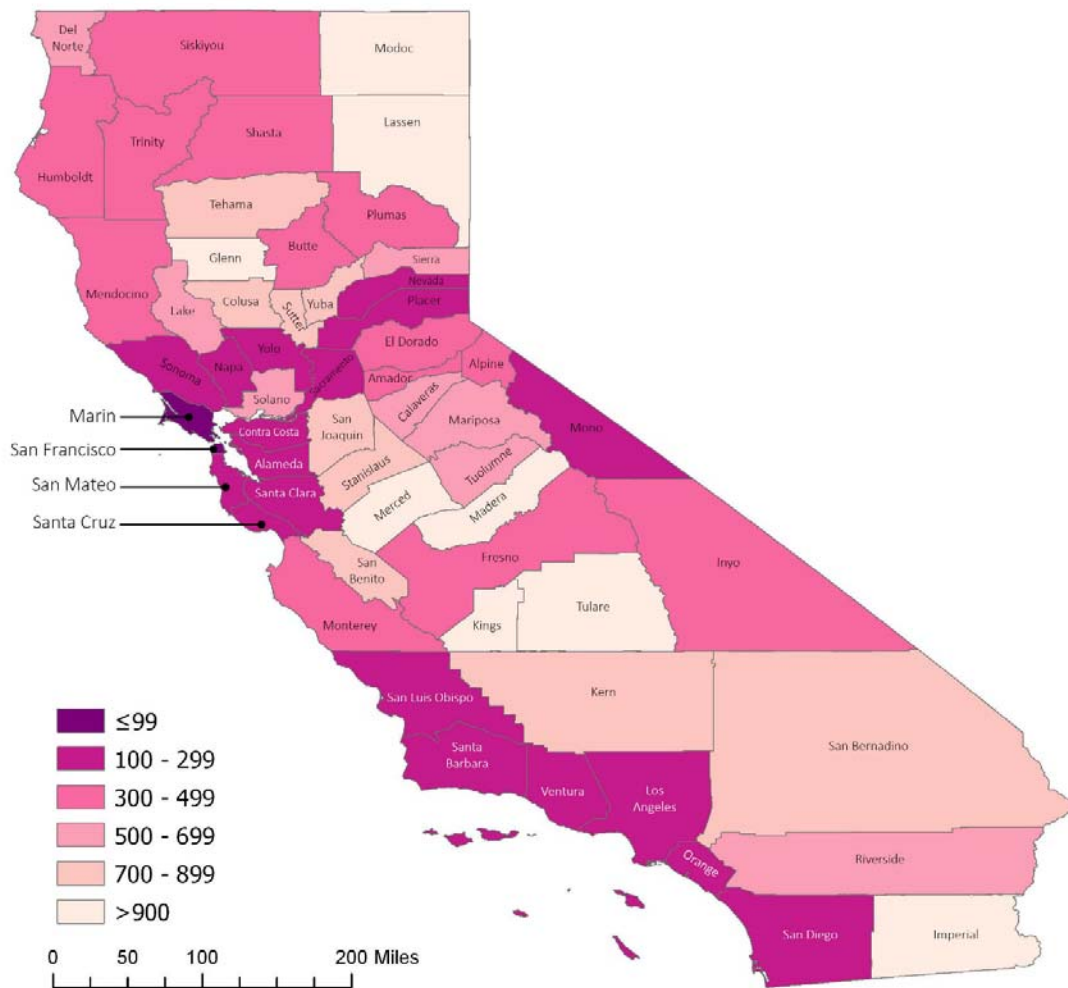
<sup>108</sup> The counties are Monterey, San Benito, San Luis Obispo, Santa Barbara, and Santa Cruz.

<sup>109</sup> The counties are Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

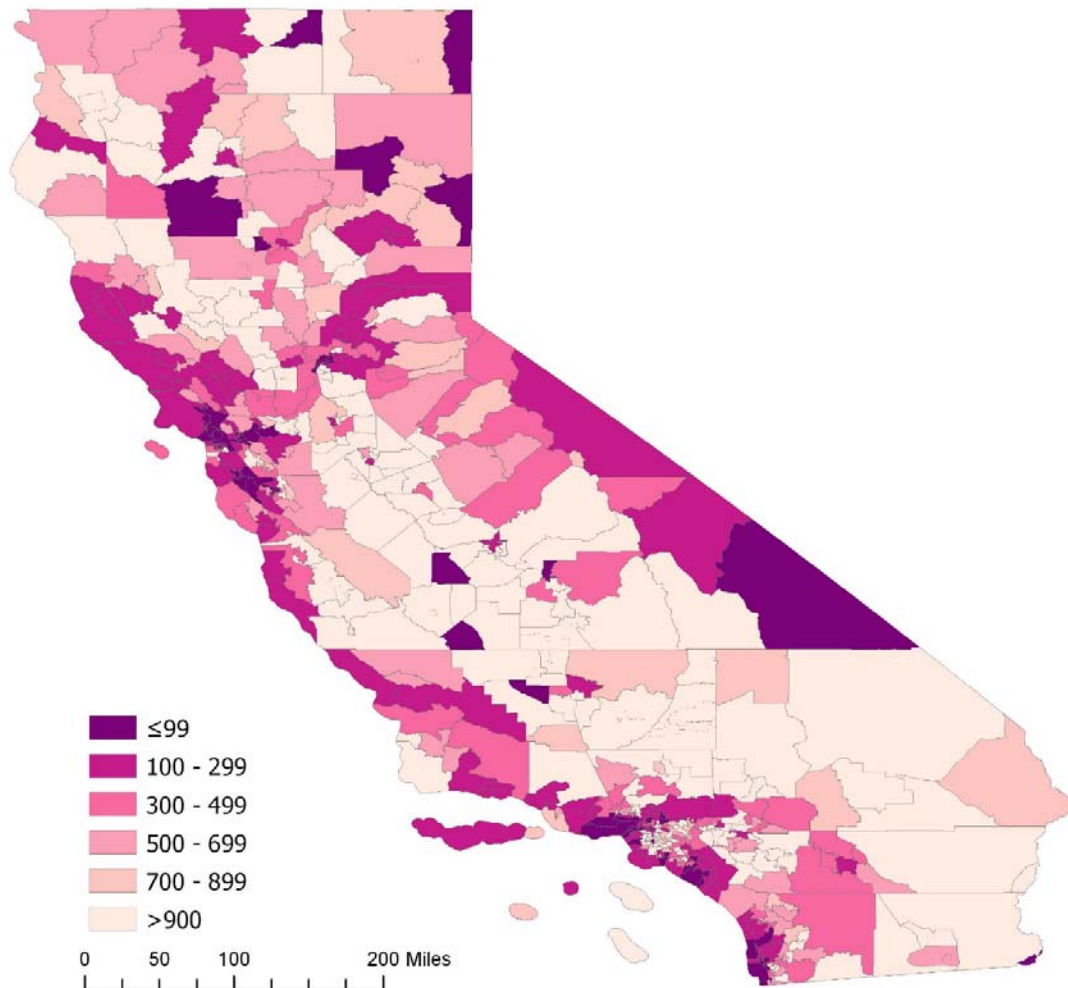
<sup>110</sup> The counties are Alpine, Amador, Calaveras, El Dorado, Madera, Mariposa, Mono, Nevada, Placer, Sierra, and Tuolumne.

<sup>111</sup> The counties are Butte, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Plumas, Shasta, Siskiyou, Sutter, Tehama, Trinity, and Yuba.

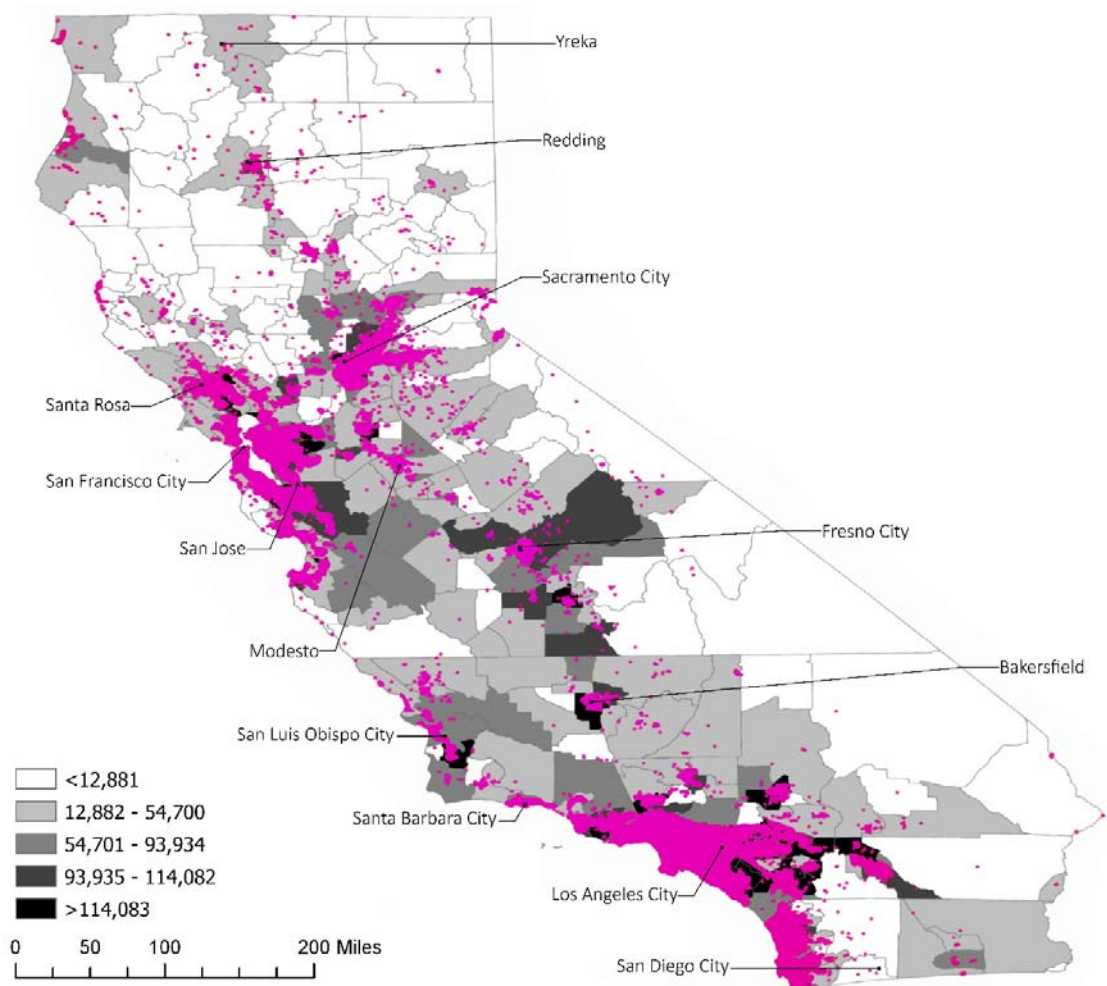
MAP 2: RESIDENTS PER ATTORNEY BY COUNTY



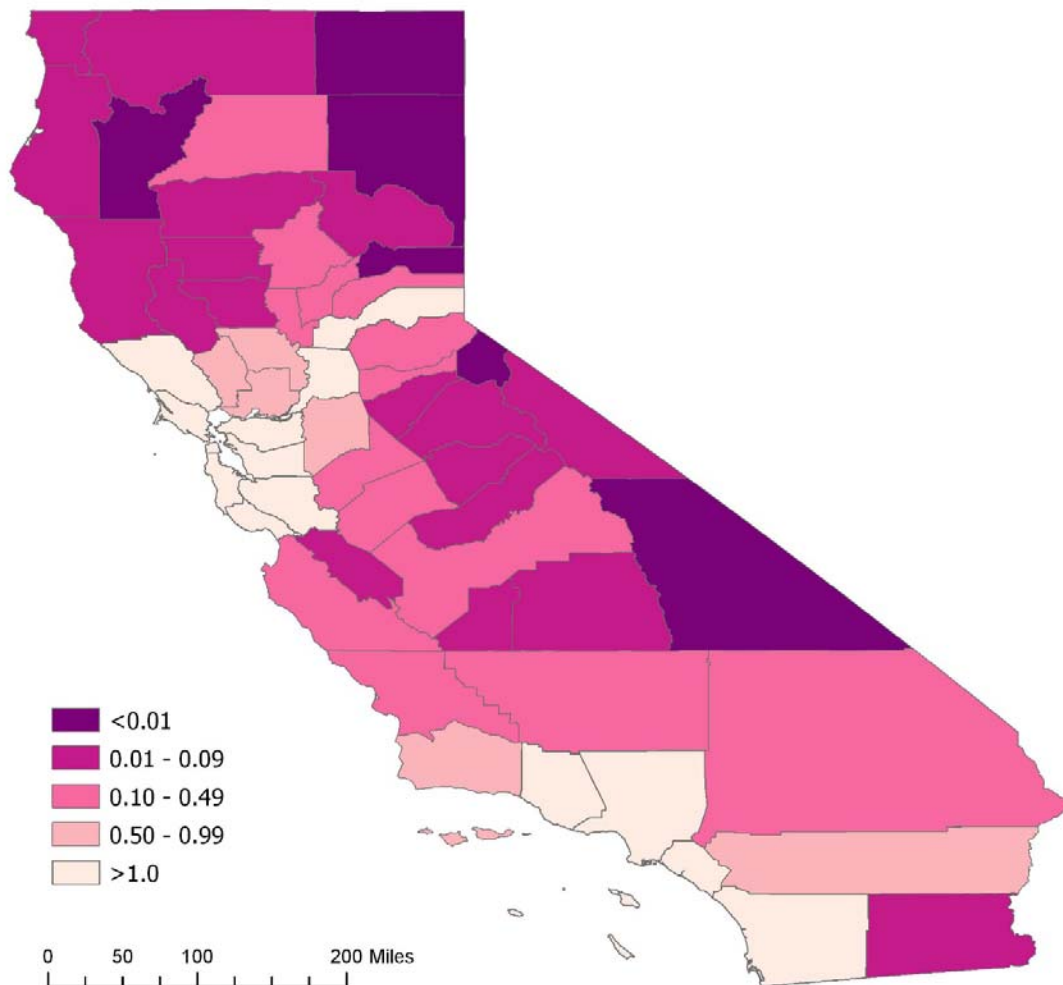
MAP 3: RESIDENTS PER ATTORNEY (MSSA)



MAP 4: POPULATION (BY MSSA) AND ATTORNEYS (PINK DOTS)



MAP 5: ATTORNEYS PER SQUARE MILE





MAP 6: POVERTY RATE

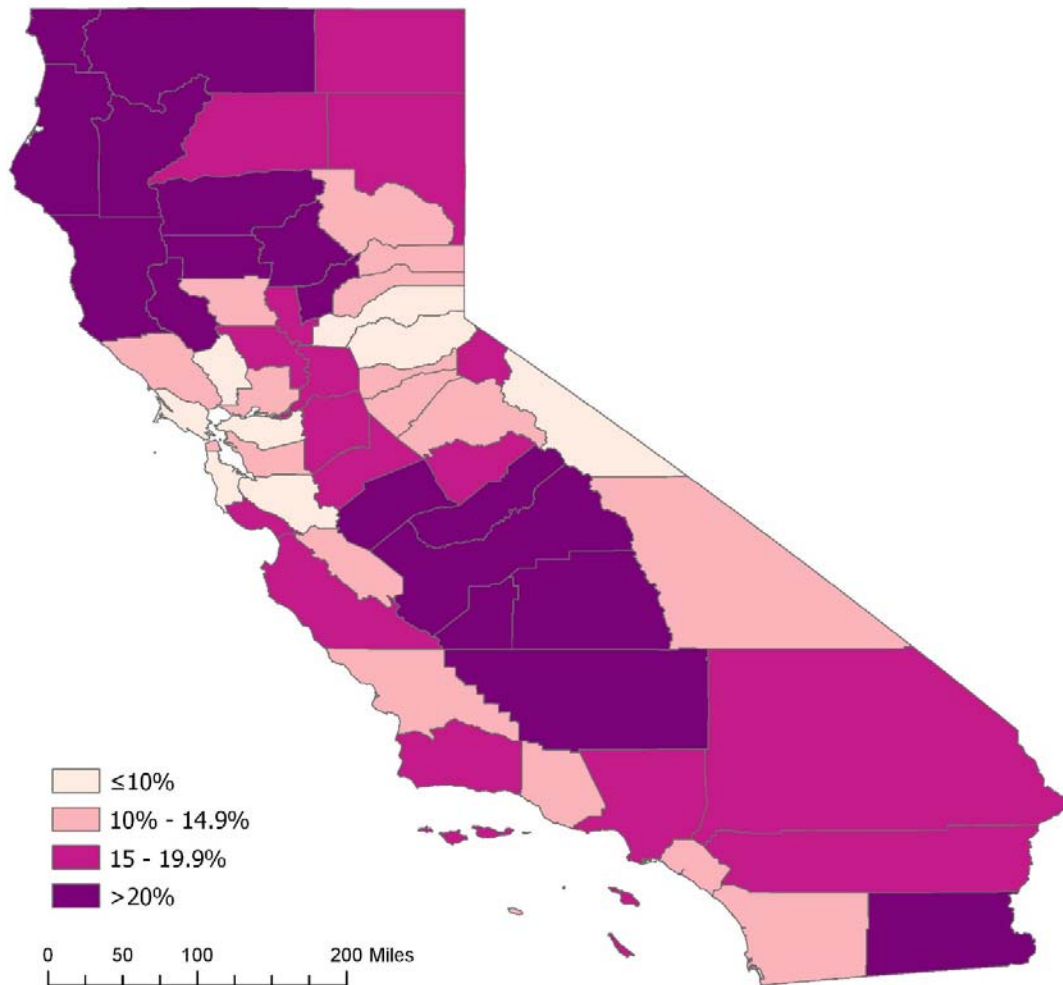


TABLE 9: CALIFORNIA ATTORNEY DATA 2016

County Name	Region	Attorney Count	Total Population	Residents per Attorney	Poverty Rate*	Area in Sq. Miles	Attorneys per square mile
Los Angeles	Southern	62,775	9,969,234	159	17.8%	4,546.65	13.8
Orange	Southern	19,406	3,086,331	159	12.5%	811.91	23.9
San Diego	Southern	18,856	3,183,143	169	14.0%	4,271.01	4.4
Ventura	Southern	3,233	835,790	259	10.6%	1,868.12	1.7
<b>Totals and Averages for Region</b>	<b>Southern</b>	<b>104,270</b>	<b>17,074,498</b>	<b>164</b>	<b>13.7%</b>	<b>11,497.69</b>	<b>9.1</b>
Imperial	Inland Empire	167	177,026	1,060	24.1%	4,481.67	0.0
Inyo	Inland Empire	55	18,439	335	10.8%	10,226.88	0.0
Riverside	Inland Empire	3,928	2,266,899	577	16.5%	7,303.05	0.5
San Bernardino	Inland Empire	2,756	2,078,586	754	19.1%	20,105.13	0.1
<b>Totals and Averages for Region</b>	<b>Inland Empire</b>	<b>6,906</b>	<b>4,540,950</b>	<b>658</b>	<b>17.6%</b>	<b>42,116.72</b>	<b>0.2</b>
Alameda	Greater Bay Area	9,357	1,559,308	167	12.0%	767.55	12.2
Contra Costa	Greater Bay Area	5,526	1,118,079	202	10.2%	974.77	5.7
Marin	Greater Bay Area	3,242	256,802	79	8.1%	574.87	5.6
Napa	Greater Bay Area	584	139,253	238	8.8%	788.58	0.7
San Francisco	Greater Bay Area	20,218	829,072	41	12.5%	204.50	98.9
San Mateo	Greater Bay Area	5,896	739,837	125	7.7%	479.22	12.3
Santa Clara	Greater Bay Area	11,785	1,841,569	156	9.3%	1,304.05	9.0
Solano	Greater Bay Area	713	421,624	591	12.7%	906.19	0.8
Sonoma	Greater Bay Area	2,215	491,790	222	11.2%	1,620.78	1.4
<b>Totals and Averages for Region</b>	<b>Greater Bay Area</b>	<b>59,536</b>	<b>7,397,334</b>	<b>124</b>	<b>10.3%</b>	<b>7,620.50</b>	<b>7.8</b>
Alpine	Gold Country & Sierra	3	1,202	401	18.9%	743.19	0.0

<b>Amador</b>	<b>Gold Country &amp; Sierra</b>	100	37,159	372	11.2%	605.95	0.2
<b>Calaveras</b>	<b>Gold Country &amp; Sierra</b>	89	44,921	505	12.7%	1,036.92	0.1
<b>El Dorado</b>	<b>Gold Country &amp; Sierra</b>	533	181,465	340	9.8%	1,734.33	0.3
<b>Madera</b>	<b>Gold Country &amp; Sierra</b>	129	152,452	1,182	22.1%	2,153.28	0.1
<b>Mariposa</b>	<b>Gold Country &amp; Sierra</b>	28	17,946	641	16.3%	1,462.82	0.0
<b>Mono</b>	<b>Gold Country &amp; Sierra</b>	57	14,193	249	8.8%	3,131.87	0.0
<b>Nevada</b>	<b>Gold Country &amp; Sierra</b>	408	98,606	242	12.1%	973.79	0.4
<b>Placer</b>	<b>Gold Country &amp; Sierra</b>	1,432	361,518	252	8.7%	1,425.54	1.0
<b>Sierra</b>	<b>Gold Country &amp; Sierra</b>	5	3,019	604	11.3%	962.16	0.0
<b>Tuolumne</b>	<b>Gold Country &amp; Sierra</b>	97	54,347	560	14.2%	2,274.44	0.0
<b>Totals and Averages for Region</b>	<b>Gold Country &amp; Sierra</b>	<b>2,881</b>	<b>966,828</b>	<b>336</b>	<b>13.3%</b>	<b>16,504.28</b>	<b>0.2</b>
<b>Butte</b>	<b>Far Northern</b>	499	221,578	444	21.3%	1,677.12	0.3
<b>Colusa</b>	<b>Far Northern</b>	25	21,424	857	13.5%	1,156.35	0.0
<b>Del Norte</b>	<b>Far Northern</b>	54	28,066	520	21.7%	1,054.11	0.1
<b>Glenn</b>	<b>Far Northern</b>	26	28,019	1,078	20.3%	1,326.97	0.0
<b>Humboldt</b>	<b>Far Northern</b>	336	134,876	401	21.0%	3,642.26	0.1
<b>Lake</b>	<b>Far Northern</b>	107	64,209	600	24.6%	1,329.42	0.1
<b>Lassen</b>	<b>Far Northern</b>	33	33,356	1,011	16.2%	4,720.10	0.0
<b>Mendocino</b>	<b>Far Northern</b>	276	87,612	317	20.2%	3,542.35	0.1
<b>Modoc</b>	<b>Far</b>	9	9,335	1,037	16.9%	4,203.39	0.0

	<b>Northern</b>						
<b>Plumas</b>	<b>Far Northern</b>	46	19,286	419	12.8%	2,613.43	0.0
<b>Shasta</b>	<b>Far Northern</b>	443	178,520	403	17.5%	3,847.38	0.1
<b>Siskiyou</b>	<b>Far Northern</b>	101	44,261	438	22.0%	6,347.35	0.0
<b>Sutter</b>	<b>Far Northern</b>	133	95,067	715	17.5%	608.49	0.2
<b>Tehama</b>	<b>Far Northern</b>	85	63,284	745	21.5%	2,962.16	0.0
<b>Trinity</b>	<b>Far Northern</b>	32	13,515	422	20.1%	3,207.60	0.0
<b>Yuba</b>	<b>Far Northern</b>	89	73,059	821	20.8%	643.80	0.1
<b>Totals and Averages for Region</b>	<b>Far Northern</b>	<b>2,294</b>	<b>1,115,467</b>	<b>486</b>	<b>19.2%</b>	<b>42,882.30</b>	<b>0.1</b>
<b>Fresno</b>	<b>Central Valley</b>	2,274	948,844	417	26.9%	6,011.05	0.4
<b>Kern</b>	<b>Central Valley</b>	1,035	849,254	821	23.1%	7,733.10	0.1
<b>Kings</b>	<b>Central Valley</b>	111	151,390	1,364	21.6%	1,391.53	0.1
<b>Merced</b>	<b>Central Valley</b>	204	261,609	1,282	24.2%	1,978.50	0.1
<b>Sacramento</b>	<b>Central Valley</b>	9,629	1,413,430	147	17.9%	789.84	12.2
<b>San Joaquin</b>	<b>Central Valley</b>	990	701,050	708	17.8%	1,426.49	0.7
<b>Stanislaus</b>	<b>Central Valley</b>	682	522,794	767	18.2%	1,514.60	0.5
<b>Tulare</b>	<b>Central Valley</b>	455	451,108	991	28.3%	4,838.65	0.1
<b>Yolo</b>	<b>Central Valley</b>	802	204,162	255	19.3%	1,023.53	0.8
<b>Totals and Averages for Region</b>	<b>Central Valley</b>	<b>16,182</b>	<b>5,503,641</b>	<b>340</b>	<b>21.9%</b>	<b>26,707.30</b>	<b>0.6</b>
<b>Monterey</b>	<b>Central Coast</b>	1,190	424,927	357	16.1%	3,330.41	0.4
<b>San Benito</b>	<b>Central Coast</b>	71	56,888	801	10.8%	1,390.47	0.1
<b>San Louis Obispo</b>	<b>Central Coast</b>	997	274,184	275	14.2%	3,342.78	0.3
<b>Santa Barbara</b>	<b>Central Coast</b>	1,876	431,555	230	15.9%	2,860.11	0.7
<b>Santa Cruz</b>	<b>Central Coast</b>	1,011	267,203	264	15.1%	457.15	2.2

Totals and Averages for Region	Central Coast	5,145	1,454,757	283	14.4%	11,380.92	0.5
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\*U.S. Census Bureau – American Fact Finder: 2012-2016 American Community Survey 5-Year Estimate

Meeker’s analysis reveals that among California’s 192,226 attorneys, nearly 96% (189,551) have addresses in urban MSSAs; slightly more than 3% (7,333) have addresses in rural MSSAs; and less than one-fifth of one percent—just 324 attorneys (0.17%)—have “frontier” addresses.<sup>112</sup> Meanwhile, among the state’s 39.2 million residents, more than 33 million (87%) live in urban MSSAs; 12.35% (4.7 million) live in rural MSSAs; and about two-thirds of a percent (252,378) live in frontier MSSAs.<sup>113</sup>

The attorney-to-population mismatch is apparent from these statewide figures. The ratio of attorneys to urban residents in California is 1:175, while each rural lawyer serves nearly four times as many residents (1:626), and each frontier lawyer serves on average a still greater number (1:738).<sup>114</sup> San Francisco County, which is consolidated with San Francisco City and is the most densely populated California county with 829,000 people living in just 204 square miles, has the highest attorney-to-population ratio at 1:41.<sup>115</sup> The lowest attorney-to-population ratio is 1:1,364, in Kings County in the Central Valley.<sup>116</sup>

Because of the significance of agriculture in the Central Valley it is the region most commonly associated with rurality.<sup>117</sup> In fact, just over a quarter of the Central Valley’s 5.5 million residents live in rural or frontier MSSAs, a far lower percentage than some other regions.<sup>118</sup> As a region, the Central Valley’s attorney-to-population ratio is a respectable 1:340. That figure is dramatically skewed, however, by the inclusion of Sacramento County, which has an especially high ratio of 1:146; a concentration of attorneys not surprising in a state capital. When Sacramento County is removed from the cluster, the Central Valley’s ratio falls to 1:624. In addition to the particular attorney shortage in Kings County, which is noted above,<sup>119</sup> several other Central Valley counties have abysmal ratios.<sup>120</sup> These attorney shortages are less surprising, perhaps, when you consider the high concentrations of poverty in the region, as depicted in Map 6 and Table 9.

While the adjacent Central Coast region is less associated with agriculture than the Central Valley, the percentage of rural and frontier residents is nearly twice as high in the Central Coast as in the Valley.<sup>121</sup> It should not come as a surprise that the lowest attorney to resident ratio among Central Coast counties is San Benito (1:801), which is adjacent to the Valley and shares many similarities with it in terms of the economy and demographics.<sup>122</sup> San Benito County’s economy is dominated by agriculture,

<sup>112</sup> Meeker Data, *supra* note 97 and Table 9.

<sup>113</sup> *Id.*

<sup>114</sup> See Meeker Data, *supra* note 97.

<sup>115</sup> In San Francisco County, 20,218 attorneys serve 829,072 residents. Table 9 and Map 2.

<sup>116</sup> Table 9 and Map 2. Just 111 attorneys serve more than 150,000 residents in Kings County.

<sup>117</sup> Reflecting the Central Valley’s widespread, popular association with rurality in the California context, a major legal aid organization serving the Central Valley is called California Rural Legal Assistance. Further, other organizations focused on the Central Valley also use the word “rural” in their names, e.g., the California Institute for Rural Studies. This is somewhat odd given that far northern California and the Sierra Nevada region of eastern California are far more rural as regions than the Central Valley. See Nancy Villarreal, *Improving Legal Aid to Rural Communities in California*, 20 BERKELEY LA RAZA L. J. 191 (2010) (treating “rural California” as synonymous with the Central Valley by focusing on California Rural Legal Assistance, which serves that region, thus excluding many less densely populated parts of the state). See also *infra* note 211 (describing UCOP Central Valley Fellowship).

<sup>118</sup> In the Central Valley, 26.2% of residents live in rural or frontier MSSAs. In the Central Coast Region, 47% of residents do. See Table 9 (regarding Far North and Gold Country/Sierra-Nevada rural percentages).

<sup>119</sup> See Meeker Data, *supra* note 97, and Table 9.

<sup>120</sup> See *id.*

<sup>121</sup> Table 9.

<sup>122</sup> Table 9. San Benito is the only county in this region that does not, in fact, feature any coastal exposure, and it might well have been clustered within the Central Valley. See *San Benito County Economic Forecast*, STATE OF CALIFORNIA (2017), [http://www.dot.ca.gov/hq/tpp/offices/eab/socio\\_economic\\_files/2017/SanBenito.pdf](http://www.dot.ca.gov/hq/tpp/offices/eab/socio_economic_files/2017/SanBenito.pdf).

and the poverty rate is high.<sup>123</sup> Other Central Coast counties are also agricultural in part, but their coastal exposure is a magnet for tourism, wealth, and human capital—including lawyers—which improve the ratios.<sup>124</sup> The overall ratio for the Central Coast region is 1:283, one of the most favorable in the state and especially robust for a region with significant rural reaches. Yet few of these lawyers practice in inland communities. The dramatically uneven distribution of attorneys within the region is illustrated in Maps 2, 3, and 5.

Two other California regions are even more dominated by rural and frontier living than central California: the Far North and the Gold Country/Sierra-Nevada. In addition to agriculture (including, notably, marijuana), tourism is a staple of their economies. In the Far North, less than one-fifth of the 1.1 million residents live in urban MSSAs.<sup>125</sup> These 16 counties are served by fewer than 2,300 lawyers spread across some 43,000 square miles (27% of the state’s land area), or one attorney for every 20 square miles. That’s an extremely stark contrast with San Francisco County, for example, where there are nearly 100 attorneys for each square mile. Far North counties with particularly poor attorney ratios include Glenn, Modoc, and Lassen, where each attorney serves more than a thousand residents.<sup>126</sup>

In the Gold Country/Sierra-Nevada, more than 60% of nearly a million residents live in frontier or rural areas.<sup>127</sup> The region is served by nearly 2,900 attorneys for a respectable ratio of 1:335.<sup>128</sup> The farther from a major metropolitan area (e.g., the Greater Bay Area, Greater Sacramento) a county lies, however, the lower its attorney-to-population ratio tends to be. This may be a consequence of greater economic activity in exurban areas than in more rural ones.<sup>129</sup> Like other places rich in natural amenities, e.g. coastal communities, these counties may also attract retired and semi-retired lawyers.<sup>130</sup> We would also expect these counties to be more attractive to young lawyers who might be drawn to the region’s outdoor amenities.

An analysis of the rural attorney shortage in California should consider more than attorney-to-population ratios. The attorney counts in the state’s least populous counties, which include many in the Gold Country/Sierra-Nevada, are among the most worrisome. Consider Sierra County, a sliver of a county stretching west to east across the Sierras, where about 3,000 people live spread over nearly a thousand square miles. Five attorneys have addresses in Sierra County, but only one is available for private representation; having been admitted to the bar in 1972, she is likely nearing retirement.<sup>131</sup> Other attorneys with Sierra County addresses work as judges, prosecutors, and in other roles.<sup>132</sup>

Such county-level scrutiny of places like Sierra County reveals an important limitation of the Meeker data: not only do the data include inactive attorneys, they do not indicate how many attorneys in any given MSSA (or county) are accepting clients. Many are employed by government entities and in jobs for

<sup>123</sup> Table 9.

<sup>124</sup> A similar phenomenon is seen in amenity-rich counties in the Greater Bay Area—upscale counties like Napa, Sonoma, and Marin, which have varying claims to be rural in part, nevertheless enjoy robust attorney populations, with ratios of 1:238, 1:222, and 1:79, respectively. The attorney-to-population ratio for the entire Greater Bay Area is 1:124. Tbl. 9.

<sup>125</sup> Meeker Data, *supra* note 97 and Table 7. Another 70% live in rural MSSAs and 11.6% live in frontier areas. *Id.*

<sup>126</sup> Table 9 and Map 2.

<sup>127</sup> *Id.* More than 58% of Gold Country/Sierra Nevada residents live in rural MSSAs, and more than 2% live in frontier MSSAs. Meeker Data, *supra* note 97.

<sup>128</sup> A number of these counties have very poor ratios, including Madera, where each lawyer serves nearly 1,200 residents. Table 9 and Map 2.

<sup>129</sup> It may also be that lawyers living in these exurban areas commute into metropolitan areas while using Gold Country/Sierra Nevada addresses for their bar membership.

<sup>130</sup> See generally LAWRENCE C. HAMILTON ET AL., U. N.H., CARSEY INST., PLACE MATTERS: CHALLENGES AND OPPORTUNITIES IN FOUR RURAL AMERICAS (2008), <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1040&context=carsey> [<https://perma.cc/ACF9-K7C>] (characterizing one group of rural counties as amenity-rich, and therefore having more hopeful futures than most rural counties); *Rural America at a Glance*, *supra* note 3 (USDA’s Economic Research Service recently recognized that the fastest-growing rural counties in the country are those with leisure-driven economies).

<sup>131</sup> C. Ingrid Larsson, <http://members.calbar.ca.gov/fal/Member/Detail/50964> (last visited Apr. 21, 2018).

<sup>132</sup> E-mail from Herb Whitaker, Manag. Att’y., Legal Servs. of N. Cal., Mother Lode Office, Auburn, Cal., to Lisa R. Pruitt, Professor of Law, Univ. of Cal., Davis (Nov. 27, 2017, 5:27 PM) (on file with Harvard Law School Library); comments of Michael G. Colantuono, Chair, Bd. of Tr., State Bar of Cal., Jan. 26, 2018. Colantuono’s law practice is based in neighboring Nevada County. <https://chwlw.us/attorneys/michael-g-colantuono/> [<https://perma.cc/9WTT-AUK8>].

which attorney licensure is not required. Further, they include inactive attorneys.<sup>133</sup> In addition to Sierra County, other Far North and Gold County/Sierra Nevada counties with particularly low attorney counts include Alpine, Modoc, Colusa, and Glenn.<sup>134</sup>

These low attorney counts signal the sorts of additional concerns seen in states where many counties have small populations: when the attorney count drops below a certain level, few if any of the attorneys present are actually working in private practice or accepting clients<sup>135</sup>; in addition, conflicts of interest become increasingly common.<sup>136</sup> As a consequence, residents must sometimes travel to neighboring counties to access legal and other justice-system services,<sup>137</sup> while attorneys must travel from outside the county to keep the justice system and local government functioning. In California’s vast mountainous regions, such travel is no small burden. The main thoroughfare through Sierra County is winding, scenic, and historic State Highway 49, named for the Gold Rush era. By way of illustration, the travel time from Sierra City to Truckee, in neighboring Nevada County, is an hour,<sup>138</sup> as is that between Sierra County’s seat, Downieville, and Nevada City, the seat of Nevada County.<sup>139</sup> Truckee and Nevada City represent the nearest critical mass of lawyers for anyone living in Sierra County who is unable to secure the services of the sole Downieville lawyer in private practice.<sup>140</sup>

Thus far, the focus of this survey has been primarily on the state’s northern and central regions, but a significant part of California’s southern third is also rural. The Inland Empire—so named to differentiate it from the coastal areas that dominate California’s image—is a region of deserts and mountains,<sup>141</sup> including vast stretches of public land. Though comprised of just four counties, this region constitutes 26% of the state’s land area (about the same as the combined 16 Far North counties) and is home to 12% of California’s population.<sup>142</sup>

The largest of the Inland Empire counties, San Bernardino, covers more than 20,000 square miles, about twice the size of Massachusetts. The vast majority of San Bernardino County residents live in metropolitan areas such as those anchored by the cities of San Bernardino, Riverside, and Palm Springs. Those and other urban MSSAs are also, predictably, where the region’s lawyers are concentrated, leaving the 11.5% of those living in remote areas of southeastern California underserved because lawyers are literally out of reach.<sup>143</sup> The attorney-to-population ratios in these counties are troubling, as is that for the region.<sup>144</sup>

Even counties like San Diego and Ventura are home to rural regions east of the coastal areas for which they are known. Extraordinarily, Los Angeles County—more than twice the size of the State of Delaware and home to more than a tenth of the state’s population and the second-largest city in the

<sup>133</sup> See *supra* note 98.

<sup>134</sup> Table 9.

<sup>135</sup> See *infra* South Dakota.

<sup>136</sup> See Pruitt & Colgan, *Justice Deserts*, *supra* note 15, at 269-72 (2010); Judith K. Meierhenry, *Confidentiality and Conflicts of Interest: A Guide for South Dakota Lawyers*, 59 S.D. L. REV. 557 (2014); Wandler, *Expanding Local Legal Services*, *supra* note 18, at 229-31, 245-49; IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA, *supra* note 55, at 12.

<sup>137</sup> Sierra County residents, for example, have access to court self-help resources in neighboring Nevada County. The latter has fixed hours, while Sierra County’s self-help center is by appointment only. *Self-Help Center*, THE SUPERIOR COURT OF CAL., CTY. OF SIERRA, <http://www.sierra.courts.ca.gov/selfhelp/index.htm> [<https://perma.cc/8ZBD-UH2X>]

<sup>138</sup> Driving Directions from Sierra City, CA to Truckee, CA, GOOGLE MAPS, <https://www.google.com/maps> (follow “Directions” hyperlink; then search starting point field for “Sierra City, CA” and search destination field for “Truckee, CA”) [<https://perma.cc/V7Q6-JJUD>].

<sup>139</sup> Driving Directions from Downieville, CA to Nevada City, CA, GOOGLE MAPS, <https://www.google.com/maps> (follow “Directions” hyperlink; then search starting point field for “Downieville, CA” and search destination field for “Nevada City, CA”) [<https://perma.cc/77E6-9G4F>].

<sup>140</sup> See *supra* note 131 and accompanying text.

<sup>141</sup> Vast segments of eastern (Sierra Nevada) and northern (Sierra Nevada and Cascades) California include extensive public lands, which is one reason few people reside there. *Discover the Inland Empire*, VISIT CALIFORNIA, <http://www.visitcalifornia.com/region/discover-inland-empire> (last visited May 3, 2018).

<sup>142</sup> Table 9.

<sup>143</sup> Meeker Data, *supra* note 97. A more detailed analysis of this region is offered in Pruitt & Williams, *infra* note 152.

<sup>144</sup> See Table 9 and Maps 3 & 5.

nation—also includes rural pockets.<sup>145</sup> Indeed, the only California county other than San Francisco with no rural or frontier MSSAs is Orange County.<sup>146</sup> Small in land area but densely populated, the coastal county is tucked between Los Angeles and San Diego counties.

Some of the disparities in lawyer availability are best revealed not by comparing counties or regions, but by looking at where lawyers are within a particular county. Fresno County makes an interesting case study because it represents a blend of rural and urban: Fresno (City), California’s fifth largest city, is surrounded by rural areas, with the Sierra Nevada rising to the east and central valley farms stretching south and west from it. The county covers some 6,000 square miles,<sup>147</sup> of which 98% is classified as rural under the MSSA scheme.<sup>148</sup> While 37% of the population lives in those rural areas, just 5% of Fresno County attorneys have addresses there.<sup>149</sup> Thus, each lawyer in an urban part of Fresno County serves around 417 people and about 1/20 of a square mile, while each rural lawyer serves around 2,887 people and 48 square miles.<sup>150</sup> The spatial distribution of lawyers in Fresno County—or more precisely their spatial concentration—is depicted in Map 7. Because the outlying areas of Fresno County are dominated by agricultural enterprises that employ a great deal of migrant labor, it stands to reason that one of the greatest legal needs there is for employment and immigration advice, in addition to the full panoply of legal services people everywhere need, e.g., family law, eviction defense, health law, and criminal matters.<sup>151</sup> Indeed, some of the most notable pro bono efforts undertaken by large urban firms in relation to rural California have aimed to provide immigration assistance, especially in Central Valley counties like Fresno.<sup>152</sup> Such pro bono outreach has also made use of technology to connect metropolitan legal resources to rural needs.<sup>153</sup>

<sup>145</sup> See Meeker Data, *supra* note 97.

<sup>146</sup> *Id.*

<sup>147</sup> *Quick Facts*, *supra* note 43 (Type “Fresno County, California” in search bar, and select “Geography: Population by Square Mile” from “Select a Fact” menu).

<sup>148</sup> Meeker Data, *supra* note 97.

<sup>149</sup> *Id.*

<sup>150</sup> Meeker Data, *supra* note 97.

<sup>151</sup> See *infra* notes 173, 174 (discussing needs identified by NCLA); see also *supra* notes 68–71 (discussing the rural legal needs identified in IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA); *supra* notes 9–14 (discussing needs identified in THE JUSTICE GAP REPORT, *supra* note 9).

<sup>152</sup> Lisa R. Pruitt & Rebecca H. Williams, *Improving Access to Justice in the Rural Reaches of Southern California*, L.A. LAW. MAG., Mar. 2018, at 26–32. Of course, LSC-funded organizations are limited in providing assistance with immigration matters. See *infra* note [ ]. See also *infra* note 211 (discussing UCOP Central Valley Fellowship).

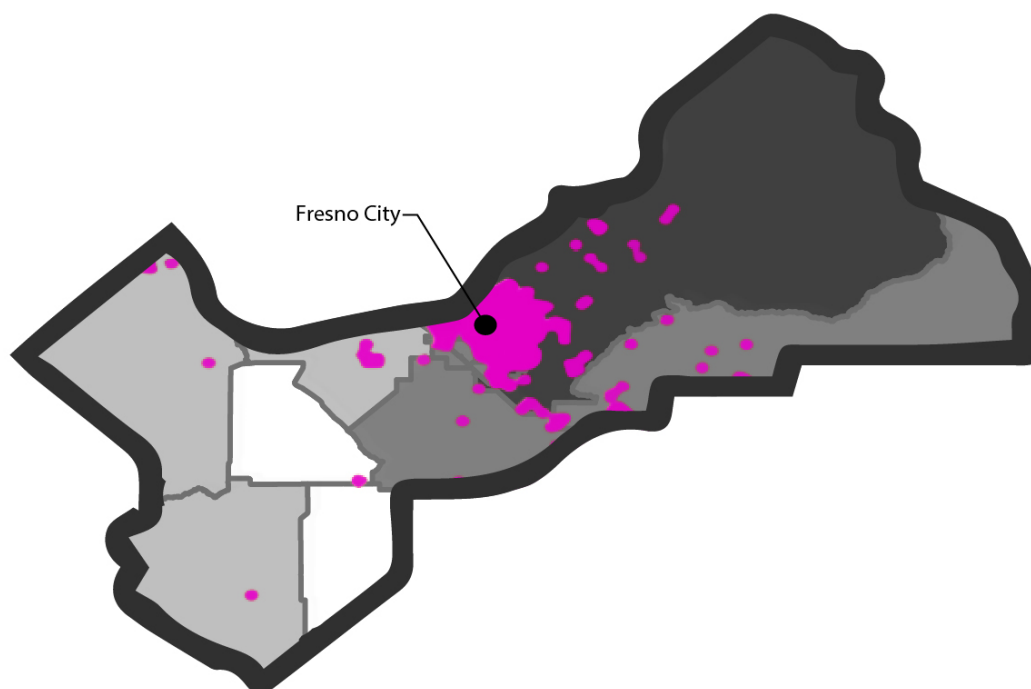
<sup>153</sup> Pruitt & Williams, *supra* note 152, at 26–32. See also *Family Law Facilitator for Lake County honored by state association*, LAKE COUNTY NEWS, March 30, 2014.

[http://www.lakeconews.com/index.php?option=com\\_content&view=article&id=36092:family-law-facilitator-for-lake-county-honored-by-state-association&catid=1:latest&Itemid=197](http://www.lakeconews.com/index.php?option=com_content&view=article&id=36092:family-law-facilitator-for-lake-county-honored-by-state-association&catid=1:latest&Itemid=197) (reporting on an award-winning endeavor by Melanie Snider of the Self-Help Assistance and Referral Program (SHARP) of Butte, Lake and Tehama counties, which connects litigants with an attorney who provides assistance with procedural questions by teleconferencing); SHARP, Videoconferences for Rural Clients, [http://www.courts.ca.gov/documents/KlepsBrief\\_SHARP.pdf](http://www.courts.ca.gov/documents/KlepsBrief_SHARP.pdf) (last visited April 17, 2018).



## MAP 7: FRESNO COUNTY, CALIFORNIA

Each pink dot represents an attorney



In Far Northern California, Shasta County is the most populous and only metropolitan county<sup>154</sup>; its county seat, Redding, with a population of about 92,000 residents, is by far the largest California city north of greater Sacramento.<sup>155</sup> Indeed, Redding is the only part of Shasta County that is not rural or frontier, yet the lion’s share of Shasta County’s attorneys—87%—have addresses in the Redding MSSA.<sup>156</sup> Only 33 of the county’s attorneys have addresses in rural parts of Shasta County, while another 23 have frontier addresses.<sup>157</sup> Shasta County covers nearly 4,000 square miles and many of its residents reside far from the critical mass of attorneys situated in the Redding metro area. This is depicted in Map 8. The attorney-to-population ratio in Redding is a respectable 1:257, a sharp contrast to a rate less than one-fifth of that in the remainder of Shasta County.<sup>158</sup>

<sup>154</sup> *Quick Facts*, *supra* note 43 (type “Shasta County, California” in search bar and select “Population Estimates July 1, 2016” from “Select a Fact” menu). The population of Shasta County is 180,000. *Id.*

<sup>155</sup> *Id.* (type “Redding, California” in search bar and select “Population Estimates July 1, 2016” from “Select a Fact” menu).

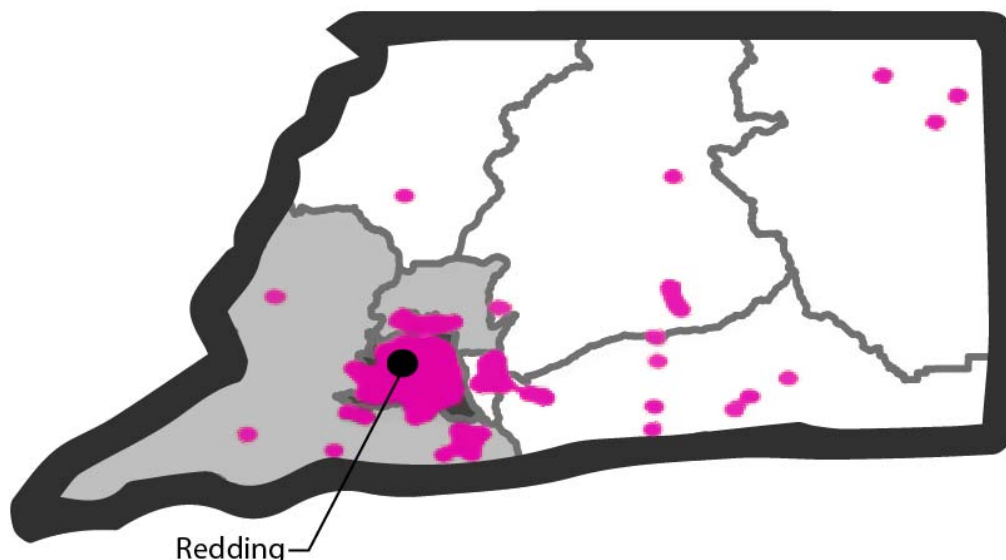
<sup>156</sup> Within Shasta County, 387 of 443 attorneys have addresses within the Redding MSSA. Meeker Data, *supra* note 97.

<sup>157</sup> Meeker Data, *supra* note 97.

<sup>158</sup> *Id.* (the attorney to resident ratio in rural and frontier Shasta County is 1:1,408).

## MAP 8: SHASTA COUNTY, CALIFORNIA

Each pink dot represents an attorney



Finally, Meeker’s analysis suggests that the poor and elderly<sup>159</sup>—both vulnerable populations—are over-represented in rural California,<sup>160</sup> which is consistent with national trends.<sup>161</sup> The data indicate that poor people are distributed evenly though rural and urban parts of the Central Valley, which includes a number of population centers, whereas the poor are more concentrated in rural and frontier areas of counties in the Far North and Gold Country/Sierra-Nevada, which generally have smaller county seats.<sup>162</sup> The elderly, too, are somewhat over-represented in rural and frontier parts of those eastern and far northern regions, but slightly under-represented in rural and frontier parts of the Central Valley.<sup>163</sup>

### 3. Policy Responses to Rural Justice Deficits

Responding to the data and trends outlined in the prior sections, the State Bar of California and associated entities, including the California Commission on Access to Justice (CCATJ), have recently

<sup>159</sup> See EVA M. DURAZO ET AL., UNIV. CAL. L.A. CENT. FOR HEALTH POLICY RESEARCH, THE HEALTH STATUS AND UNIQUE HEALTH CHALLENGES OF RURAL OLDER ADULTS IN CALIFORNIA (June 2011), <http://healthpolicy.ucla.edu/publications/Documents/PDF/The%20Health%20Status%20and%20Unique%20Health%20Challenges%20of%20Rural%20Older%20Adults%20in%20California.pdf> [https://perma.cc/Z3VY-BEFP]. See also *Rural Poverty & Well Being*, U.S. DEP’T. OF AGRIC., ECON. RESEARCH SERV., <https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/> (last updated Nov. 22, 2017) [https://perma.cc/TT2E-N786].

<sup>160</sup> In the Far North, for example, 89.2% of residents over age 65, and 91% of those living below the poverty line reside in rural or frontier areas, compared to 82% of the overall population. In the Gold Country/Sierra-Nevada, 63.2% of the elderly and 72.9% of those below the poverty line live in rural or frontier areas, compared to 60% of the general population. In the Central Valley, 25.6% of the elderly and 27.5% of those below the poverty line live in rural or frontier MSSAs, compared to 26.5% of the population. The percentage of rural or frontier residents whose incomes are 200% of the federal poverty line or lower is 81.8% for the Far North; 72.4% for Gold Country/Sierra-Nevada; and 28.1% for the Central Valley. Meeker Data, *supra* note 97.

<sup>161</sup> See Pruitt & Showman, *supra* note 18; Rebecca L. Sandefur & Aaron Smyth, *Access Across America: First Report of the Civil Justice Infrastructure Mapping Project*, AMERICAN BAR FOUNDATION, (October 7, 2011), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1962790&download=yes](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1962790&download=yes).

<sup>162</sup> Meeker data, *supra* note 97.

<sup>163</sup> *Id.*

shifted more attention to the rural lawyer shortage and associated justice system challenges. One tack has been to re-think the allocation of funding streams to the state’s 97 legal aid organizations. An October 2016 letter from the CCATJ to the Legal Services Trust Fund advocated that new funding streams be allocated in ways that better serve rural communities, thus beginning to narrow the widening rural-urban justice gap.<sup>164</sup> This advocacy acknowledges the particular spatial and economic challenges facing rural communities, as well as the critical roles played by the legal aid organizations serving them. Deficits in services for low-income rural residents can undermine the efforts of legal aid organizations.<sup>165</sup>

The CCATJ letter called the Trust Fund’s attention to three principles of the 2010 Report that support a reallocation: (1) the pursuit of geographical equality, specifically that “the amount and type of legal assistance available to low and moderate income Californians should not depend on where those individuals reside”; (2) increased funding for rural legal services “with the caveat that ‘any initiative to address the severe lack of resources in rural areas should not be developed in a way that unnecessarily undermines urban programs’”; and (3) the development of “minimum access guidelines” as a basis for allocating funding.<sup>166</sup> The latter item responds to the state’s burgeoning rural-urban funding gap: since the 2010 Report, 25 of California’s 28 rural counties<sup>167</sup> have seen their legal services funding per poor person fall below the new state average of \$21.37.<sup>168</sup> Between 2009 and 2015, rural funding fell to \$14.72 per poor resident, less than a third of the urban funding level, which increased to \$47.23 per poor resident.<sup>169</sup> Robust donations to urban-focused legal aid programs, a reflection of a well-documented rural-urban charity gap,<sup>170</sup> are presumably a significant cause for this widening geographical inequity in legal aid funding. Although the LSTF has not taken any formal action on the letter, the latest round of grant recipients (for bank grant awards) does include many programs that serve rural populations.<sup>171</sup>

In recent years, the State Bar has supported several incubator projects aimed at launching lawyers to serve modest means clients. Most of the incubators have been in highly urbanized places,<sup>172</sup> but two grants went to programs in places that are rural by some measure and thus might have channeled lawyers into rural practice. Unfortunately, the only rural incubator to get off the ground shut down after less than a year, though not due to any lack of demand. Northern California Lawyer Access, Inc., (NCLA) in Grass Valley (Nevada County), in the state’s Gold Country/Sierra-Nevada, attracted a great deal of early interest as both a lawyer-referral service and an incubator. NCLA aimed to serve a 20-county area, including parts of Far Northern California and the Gold Country/Sierra-Nevada.<sup>173</sup> The NCLA reported in its interim self-assessment that during the first six months of 2015:

<sup>164</sup> Letter from CCATJ to Legal Services Trust Fund Commissioners, Oct. 12, 2016 (on file with Harvard Law Library) [hereinafter Letter from CCATJ to LSTFC]. See also *supra* notes 91–95, describing funding disparities among rural, urban and mixed rural-urban counties in California. See also Pruitt & Showman, *supra* note 18; Sandefur & Smyth, *supra* note 161.

<sup>165</sup> Letter from CCATJ to LSTFC *supra* note 164. Among other issues, the letter specifically noted the disproportionate impact of wildfires on rural communities and the added work legal aid organizations do in the wake of such disasters. See Amy Yarbrough, *Lending legal aid after the Valley Fire devastation*, CAL. BAR JOURNAL (Nov. 2015)

<http://www.calbarjournal.com/November2015/TopHeadlines/TH1.aspx> [https://perma.cc/N8PG-TF08].

<sup>166</sup> Letter from CCATJ to LSTFC, *supra* note 164.

<sup>167</sup> Legal Services Funding by Population Density, *supra* note 92.

<sup>168</sup> Letter from CCATJ to LSTFC, *supra* note 164; see also *supra* note [ ].

<sup>169</sup> Letter from CCATJ to LSTFC, *supra* note 164.

<sup>170</sup> *Rural Pro Bono Project*, AMERICAN BAR ASSOCIATION,

[https://www.americanbar.org/groups/probono\\_public\\_service/projects\\_awards/rural\\_pro\\_bono\\_project.html](https://www.americanbar.org/groups/probono_public_service/projects_awards/rural_pro_bono_project.html).

<sup>171</sup> Spreadsheet of 2018 Bank Grant Awards (on file with Harvard Law Library). Rural-serving programs (with respective annual awards) include: California Rural Legal Assistance Foundation (\$200,000); California Rural Legal Assistance, Inc. (\$275,000); Central California Legal Services (\$275,000); Family Violence Appellate Project (\$100,000); and Legal Services of Northern California (\$250,000).

<sup>172</sup> For example, the Los Angeles Incubator Consortium (LAIC) is a successful example of an attorney incubator program that has helped local attorneys and law school graduates successfully adjust to serving rural areas. The LAIC is a partnership between Southwestern Law School, UCLA School of Law, Loyola Law School, Los Angeles, local legal aid organizations and the Los Angeles County Law Library, which trains new attorneys in Los Angeles. See LOS ANGELES INCUBATOR CONSORTIUM, <https://www.laincubatorconsortium.com/> [https://perma.cc/9AZV-XG49].

<sup>173</sup> Northern California Lawyer Access, Inc., Interim Performance Report 3–4 (on file with Harvard Law Library) (indicating the counties in the service area).

We captured 630 individual calls for [an] average number 105 requests for legal assistance per month. We were able to refer only 21% of those to traditional LRS [lawyer referral service] panel attorneys. Our working assumption in applying for the State Bar Incubator/Modest Means grant was, and continues to be [,] that a large proportion of those requests we turned away were seeking low or mid-cost legal services. Despite the fact that we purposely did not market our new academy and low-cost services, we were unprepared for the July increase in requests for service.

The word was out and our wait-list was growing each day.<sup>174</sup>

NCLA thus documented a clear need for low-cost legal services in the region.

Regarding the incubator in particular, four solo practitioners “graduated” from the incubator in 2015, and several of these lawyers are already integrated into the Nevada County legal scene.<sup>175</sup> NCLA was forced to close, however, when the lawyer referral service housing it was shuttered.<sup>176</sup> At that point, it had a waiting list of attorneys wishing to join the incubator program.<sup>177</sup>

An incubator to be hosted by San Joaquin College of Law (SJCL), a California-accredited institution in Fresno County, was approved for a State Bar grant in 2015.<sup>178</sup> Ultimately, however, that incubator project did not proceed because the institution was unable to identify a sufficient number of its graduates in need of incubator support.<sup>179</sup> That is, the vast majority of the institution’s graduates—most of whom are coming from the region—find jobs there and do not need incubator assistance.<sup>180</sup> The CCATJ continues to seek new opportunities to support rural-based and rural-focused incubators.<sup>181</sup>

In January, 2018, the State Bar of California Board of Trustees took up the matter of the rural lawyer shortage at its annual strategic planning session. The Board invited the co-chairs of the Rural Task Force, Lisa Pruitt and Salena Copeland, Executive Director of the Legal Aid Association of California, to speak about the spatial distribution of California lawyers and the law student debt crisis that is contributing to

<sup>174</sup> *Id.* at 2–3 (further documenting the demand for legal assistance: “During the month of July 2015, our office’s two line phone system and 2 volunteers attempted to handle 960 calls. This number included incoming and outgoing calls. After removing outgoing messages, and duplicates, we were left with 426 voicemail messages requesting low or moderate cost services. Some of these callers were diverted to our website where they could fill out a form and contact us that way. However, due to staffing and equipment shortages, we were able to return only 277 of those calls during the reporting period (July 2015). Of those we returned (108), 36 (33%) were referred to a traditional market-rate LRS panel member.”).

<sup>175</sup> Comments of Michael G. Colantuono, Chair of Board of Trustees, State Bar of California, Jan. 26, 2018, Board of Trustees meeting. *See also* Report on the Moderate Means Incubator Project of the California Commission on Access to Justice, June 2016 (on file with Harvard Law Library).

<sup>176</sup> Report on the Moderate Means Incubator Project, *supra* note 175, at 4 (“Seven solos expressed interest in joining NCLA’s 2016 class and four solos graduated from the class of 2015. Of the latter four, two are now in their own solo practices, one is working as a municipal attorney, and the fourth was asked to take over the practice of a local solo. Despite their small size, they provided hundreds of hours of pro bono legal assistance, including to victims of the wildfires that hit their area last year.”).

<sup>177</sup> NCLA Interim Performance Report, *supra* note 173.

<sup>178</sup> *See* Report on the Moderate Means Incubator Project, *supra* note 175, at 6 & n.3.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> Discussions at the most recent meetings of the California Commission on Access to Justice on December 8, 2017 and February 9, 2018 addressed the goals and needs of the Rural Task Force and gave liaison updates for the Standing Committee on the Delivery of Legal Services (SCDLS), Legal Services Trust Fund Commission (LSTFC), Council on Access and Fairness (COAF), and the Legal Aid Association of California (LAAC). *See Notice and Agency*, THE STATE BAR OF CAL., CAL. COMM’N ON ACCESS TO JUSTICE (Dec. 8, 2017), <http://board.calbar.ca.gov/docs/meeting/meeting1000020285.pdf> [<https://perma.cc/FC9T-QG53>]; *Notice and Agency*, THE STATE BAR OF CAL., CAL. COMM’N ON ACCESS TO JUSTICE (Feb. 9, 2018), <http://board.calbar.ca.gov/docs/meeting/meeting1000021373.pdf> [<https://perma.cc/F96Q-3F2J>]. Furthermore, the most recent meetings of the Rural Task Force on February 16, 2018 and March 16, 2018 concerned salient issues such as rural attorney shortages, disaster legal services, immigration, and housing problems related to rural homelessness and housing shortages. *See Notice and Agenda, Rural Task Force Meeting*, THE STATE BAR OF CAL., CAL. COMM’N ON ACCESS TO JUSTICE (Feb. 16, 2018), <http://board.calbar.ca.gov/docs/meeting/meeting1000021376.pdf> [<https://perma.cc/T9N4-ER23>]; *Notice and Agenda, Rural Task Force Meeting*, THE STATE BAR OF CAL., CAL. COMM’N ON ACCESS TO JUSTICE (Mar. 16, 2018), <http://board.calbar.ca.gov/docs/meeting/meeting1000021583.pdf> [<https://perma.cc/94R7-SYX2>]. The CCATJ and Rural Task Force are subcommittees of The State Bar of California and all meeting agendas are made available on its website. *See State Bar Committee and Commissions Meeting Archive*, THE STATE BAR OF CAL., <http://board.calbar.ca.gov/CommitteeArchive.aspx> [<https://perma.cc/GH5H-AZXP>].

that shortage.<sup>182</sup> Following that presentation, the Board in March 2018 finalized its strategic five-year plan, including five access-to-justice objectives. None of those objectives acknowledged or addressed the rural lawyer shortage explicitly, although related issues such as the high cost of legal education and loan forgiveness programs, as well as the possibility of licensing para-professionals, were articulated.<sup>183</sup>

#### 4. *The Role of Legal Education*

With 56 law schools—including 21 ABA-AALS Accredited Institutions, 15 California-Accredited ones, and 20 unaccredited “distance learning, fixed facility, and correspondence” schools<sup>184</sup>—the legal education landscape of the Golden State is far more vast and varied than in the average state. High tuition at ABA-AALS Accredited law schools and resultant student debt burden shapes most graduates’ decisions about how—and where—they use their law degrees. California has five high-caliber public law schools, but the cost of attending these institutions is much greater than comparable schools in other states. The average 2018 cost of attending one of California’s five public law schools was \$46,453 in tuition and fees (in state).<sup>185</sup> Table 8 That figure is as much as three times the cost of other states’ public law schools with comparable rankings and employment rates.<sup>186</sup> The average annual tuition for all ABA-AALS Accredited law schools in California—including both public and private institutions—is only marginally greater, at \$49,558, for a total of \$148,673 over three years.<sup>187</sup> In part as a consequence of such high law school tuition, average student debt among those graduating from California’s ABA-AALS Accredited institutions in 2016 was nearly \$143,000, some 27% greater than the national average.<sup>188</sup>

It thus stands to reason that the level of student debt associated with ABA-AALS Accredited legal education in California deters students from seriously considering rural practice, where remuneration is unlikely to be competitive with metropolitan salaries.<sup>189</sup> One UC Davis Law graduate stated in a late 2017 communication that she was practicing in a county seat in far northern California, having chosen that locale in part because she had spent some of her youth in the area.<sup>190</sup> The lawyer had graduated early in the current decade with about \$180,000 in law school debt, on top of about \$20,000 in undergraduate debt.<sup>191</sup> The lawyer’s practice was thriving, and she was able to charge clients (mostly local government

<sup>182</sup> See Lisa R. Pruitt & Selena Copeland, *Panel II: The Future of Access to Justice*, THE STATE BAR OF CAL. (Jan. 26, 2018), [http://calbar.granicus.com/MediaPlayer.php?view\\_id=3&clip\\_id=241&meta\\_id=19790](http://calbar.granicus.com/MediaPlayer.php?view_id=3&clip_id=241&meta_id=19790) [<https://perma.cc/GC2C-MGTP>]. See also *infra* Section I.A.4, The Role of Legal Education (detailing law student debt in California).

<sup>183</sup> State Bar of California, Board of Trustees, 2017-2022 Strategic Plan, Goal 4, updated March 2018, <http://www.calbar.ca.gov/Portals/0/documents/bog/Updated%202017-2022%20Strategic%20Plan.pdf> (last visited Apr. 28, 2018).

<sup>184</sup> State Bar of California, Admission and Discipline Systems Training, Jan. 25, 2018 <http://www.calbar.ca.gov/Portals/0/documents/communications/Admissions-and-Discipline-System-Training-Jan2018.pdf> (this data point is at slide 34). The remaining 20 institutions are unaccredited.

<sup>185</sup> *What Are the Priciest Public Law Schools?*, U.S. NEWS, <https://www.usnews.com/best-graduate-schools/top-law-schools/public-cost-rankings> [<https://perma.cc/T2MN-87QX>] (averaging the 2018 in-state cost of attendance at University of California, Berkeley, University of California, Davis, University of California, Los Angeles, University of California, Irvine, and University of California, Hastings law schools).

<sup>186</sup> The University of North Carolina at Chapel Hill School of Law, for example, charged \$23,889 for in-state tuition and fees in 2018, while the University of Georgia School of Law cost \$19,696, the University of Alabama School of Law cost \$23,720, and the William & Mary Law School cost \$32,964. See *id.* See also Table 8 (providing the average cost of legal education in each of the six states compared in this article).

<sup>187</sup> State Bar of California, Admission and Discipline Systems Training, Jan. 25, 2018 <http://www.calbar.ca.gov/Portals/0/documents/communications/Admissions-and-Discipline-System-Training-Jan2018.pdf> (this data point is at slide 35).

<sup>188</sup> Spreadsheet of California ABA Accredited Law Schools Debt in 2016, Legal Aid Association of Cal. (Jan. 2018) [hereinafter Legal Aid Spreadsheet] (on file with the Harvard Law School Library) (based on U.S. News and World Report data).

<sup>189</sup> But see *infra* note 449 (discussing Texas Bar Salary Survey).

<sup>190</sup> Telephone Interview with a graduate of the University of California, Davis, School of Law (Oct. 19, 2017) [hereinafter UC Davis Telephone Interview] (e-mail referencing interview on file with Harvard Law School Library; interview summarized in Dec. 18, 2017 document).

<sup>191</sup> E-mail from a graduate of the University of California, Davis, School of Law to author (Jan. 18, 2018, 13:54 PST) (on file with the Harvard Law School Library) [hereinafter UC Davis E-mail].

entities) \$200/hour, of which her firm paid her a percentage.<sup>192</sup> Her income was about \$88,000 in 2017.<sup>193</sup> Yet the lawyer had been unable to make sufficient payments on her student loans to begin to reduce the principal. She was making income-based payments of about \$700/month, which meant her loan balance was steadily increasing due to negative amortization and was currently approaching \$300,000.<sup>194</sup> The opportunity to make income-based payments on her student loans meant the lawyer could afford to make a mortgage payment, but she was unable to buy a home because she found banks unwilling to lend to people with debt that can be forced into full repayment, which would be the case for her if the government eliminated the income-based repayment program.<sup>195</sup>

This scenario suggests the need for some sort of generous loan-repayment assistance f—a sum commensurate with the high cost of legal education in California<sup>196</sup>—for lawyers willing to serve rural residents. This funding could come from the state legislature, the State Bar of California and/or law schools. It should be on offer not only for public interest lawyers in rural areas, but also for private practitioners, who can be seen as serving the public interest by their very presence in attorney deserts.<sup>197</sup> Indeed, Stanford Law School’s Loan Repayment Assistance Program – alone among California law schools – recognizes this phenomenon and covers graduates doing this type of work.<sup>198</sup>

But the high cost of legal education is not the only consideration keeping California lawyers from staking a claim to legal work in the state’s rural reaches. Like young lawyers elsewhere,<sup>199</sup> many California law graduates are unwilling to forego the urban amenities to which they are accustomed, and they do not want to leave urban-based family and friends.<sup>200</sup> They also express concerns about not being able to find a life partner in a rural area or—if they already have a partner—they worry that the partner will be unable to find a good job in rural California.<sup>201</sup> Finally, young Californians often find the political and social climate of rural California off-putting. As one attorney expressed it, “There is emotional stress of feeling socially and politically isolated in a place like Modesto,”<sup>202</sup> the seat of Stanislaus County, in the Central Valley.

One way to counter this urbancentrism among law graduates is to expose them to rural practice early and often, as through summer and clinical opportunities. To that end, several California law schools have participated in is One Justice’s Justice Bus, which takes students, as well as attorneys, into rural locales for short-term legal clinics.<sup>203</sup> Some law schools provide other opportunities for rural engagement. For

<sup>192</sup> UC Davis Graduate Telephone Interview, *supra* note 190.

<sup>193</sup> UC Davis Graduate E-mail, *supra* note 191.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> See *What Are the Priciest Public Law Schools?*, *supra* note 185. The amount of student debt accrued by students at California law schools is about a third higher than elsewhere in the nation. See Legal Aid Spreadsheet, *supra* note 188.

<sup>197</sup> See *infra* Institutional Framework and South Dakota’s Legal Needs (discussing how rural private-practice attorneys in South Dakota serve the public interest).

<sup>198</sup> *Miles and Nancy Rubin Loan Repayment Assistance Program*, STANFORD LAW SCHOOL 1-3 (Oct. 2017),

<https://law.stanford.edu/wp-content/uploads/2015/03/LRAP-2018-Program-Terms-1.pdf>.

<sup>199</sup> See Pruitt et al., *supra* note 29, at 628–42, 645–54 (reporting the reasons given by Arkansas lawyers and law students for choosing not to practice in a rural locale).

<sup>200</sup> E-mail from Salena Copeland, Exec. Dir., Legal Aid Ass’n of Cal., to Lisa R. Pruitt, Prof. of Law, Univ. of Cal., Davis, School of Law (Mar. 17, 2018, 15:49 PM) [hereinafter Copeland E-mail IV] (on file with Harvard Law Library) (quoting a lawyer at Central California Legal Services who said of recent graduates, “They’re young and want to be in a fun city.”). See also IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA, *supra* note 55, at 12 (noting that attorney recruitment and retention are the biggest challenges facing managers of rural legal aid programs).

<sup>201</sup> IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA, *supra* note 55, at 12. See also E-mail from Liza Thantrannon, Legal Servs. of Northern Cal., to Lisa R. Pruitt, Professor of Law, Univ. of Cal., Davis (Jan. 22, 2018, 4:47 PM) (on file with Harvard Law Library) (regarding Legal Services of Northern California study on retention of lawyers, comparing its urban and rural office locations).

<sup>202</sup> Copeland E-mail IV, *supra* note 200 (quoting a former staff attorney with California Rural Legal Assistance).

<sup>203</sup> *Justice Bus Project*, ONEJUSTICE,

<https://onejustice.org/probonojustice/justice-bus-project/> [<https://perma.cc/AWR5-GDDS>]; see also Kyle Kate Dudley, *Mobile Courts: a solution to the “access to justice” problem in rurality?*, LEGAL RURALISM BLOG (Mar. 4, 2017, 11:52 PM) <http://legalruralism.blogspot.com/2017/03/mobile-courts-solution-to-access-to.html> [<https://perma.cc/KVD4-C6T8>]; Kelsey

example, law students participating in UC Irvine’s Community and Economic Development Clinic had the opportunity to represent farmworkers living in a substandard mobile-home park in Riverside County’s Coachella Valley.<sup>204</sup> UC Davis Law School’s new Tribal Justice Project will engage students with rural California.<sup>205</sup> Stanford Law School’s Organizations and Transactions clinic, too, provides opportunities for rural exposure by representing small food and agricultural enterprises, many in rural locales.<sup>206</sup> Finally, the State Bar of California in 2017 made a joint grant to three California law schools for purposes of developing a “Practice 99” course, a “model law school curriculum to foster new practices to serve low and modest-means clients,”<sup>207</sup> particularly in the Central Valley post-graduation.<sup>208</sup> In a sense, it is an incubator-type course, but offered as law school curriculum rather than as an add-on program. The program aims to empower “Practice 99 graduates” to “put their knowledge to work to open firms that offer sliding scale fees.”<sup>209</sup>

Fellowships, both during and after law school, also target rural needs. The Legal Aid Association of California sponsors the Dan Bradley Fellowship, which offers summer support to a student wishing to pursue a career in public interest law and who “want[s] to spend [the] summer working in a rural area or on a rural issue.”<sup>210</sup> As of 2018, UC Davis is sponsoring a two-year fellowship for a new graduate to work in the Central Valley representing those with family member(s) detained by immigration authorities in one of two area detention facilities.<sup>211</sup>

In light of these concerns and trends, policy makers should seriously consider how California-accredited law schools—some of which are located in rural or quasi-rural areas, e.g., San Joaquin College of Law in Fresno County; Cal Northern School of Law in Butte County (Far North); and Monterey College of Law with locations in Monterey, San Luis Obispo (both Central Coast) and Kern (Central Valley) counties—can be a larger part of the solution. The total tuition for a JD program at a Cal-Accredited institution is less than half that of the state’s ABA-AALS Accredited schools, \$65,709 compared to \$148,673.<sup>212</sup> Further, Cal-Accredited institutions in rural and quasi-rural locales tend to

Blegen, *UC Davis School of Law’s first Justice Bus trip*, LEGAL RURALISM BLOG (May 23, 2012, 2:56 AM)

<http://legalruralism.blogspot.com/2012/05/uc-davis-school-of-laws-first-justice.html> [https://perma.cc/GLS8-SKFS].

<sup>204</sup> *Community and Economic Development Clinic*, UCI L., <http://www.law.uci.edu/academics/real-life-learning/clinics/ced.html> (last visited August 21, 2017); Rina Palta, *Coachella Valley Trailer Park With Sewage Problem to Get Overhaul*, SOUTHERN CAL. PUB. RADIO (Feb. 19, 2016), <http://www.scpr.org/news/2016/02/19/57762/sewage-overflow-problem-in-coachella-trailer-park/>.

<sup>205</sup> UC Davis Tribal Justice Project, <https://law.ucdavis.edu/centers/critical-race/tribal-justice/> (last visited April 24, 2018).

<sup>206</sup> See Jay A. Mitchell, *Getting Into the Field*, 7 J. OF FOOD LAW & POLICY 69, 82, 93, 97 (2011).

<sup>207</sup> Grant Agreement Between the State Bar of California Office of Legal Services—Center on Access to Justice and San Joaquin College of Law. Aug. 21, 2017 (on file with Harvard Law Library). The three law schools collaborating on the project were San Joaquin College of Law, UC Berkeley and UC Davis. *Id.* The grant was made pursuant to a California Bar Foundation Diversity Pipeline Grant Application. *Id.*

<sup>208</sup> Among other details provided in the grant application were data on the lawyer shortage in the Central Valley. *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> Legal Aid Association of California, Dan Bradley Fellowship, <http://laaonline.org/award/dan-bradley-fellowship/> (last visited March 31, 2018).

<sup>211</sup> UCOP Fellowship Opportunity—Central Valley Legal Fellow, job description, (on file with Harvard Law School Library).

The description for the fellowship elaborates on the need:

The Central Valley is a rural community comprised of six counties with an immigrant population estimated at 885,700. The Institute on Taxation and Economic Policy estimates that 273,000 undocumented immigrants call this region home. The legal resources in the community are scarce. There are approximately 3-5 solo immigration practitioners in the Fresno area at capacity for paid and pro bono cases. The Central Valley Legal Partnership Initiative has as its vision the establishment of legal services throughout the Central Valley that service Latino communities from Kern to San Joaquin counties.

*Id.* The fellowship is funded by the University of California, Office of the President but offered through UC Davis School of Law. E-mail from Leticia M. Saucedo, Prof. of Law, Univ. of Cal., Davis, to Lisa R. Pruitt, Prof. of Law, Univ. of Cal. Davis (Apr. 3, 2018, 1:24 PM) (on file with Harvard Law School Library).

<sup>212</sup> *Admission and Discipline Systems Training*, *supra* note 184 (this data point is at slide 35). See also Lisa R. Pruitt, Spreadsheet of Non-ABA-AALS Accredited Law Schools Information (on file with the Harvard Law School Library) (comparing total tuition and costs, tuition per unit, the total units needed to graduate, the number of students who have taken the California Bar Exam over a 5-year period, the number of those who have passed the exam over a 5-year period, the number of

attract students from their surrounding areas and to send graduates back to serve those rural communities.<sup>213</sup> The most recent graduate employment surveys of these Cal-Accredited institutions show that 86% of the graduates of both San Joaquin College of Law and Monterey College of Law are practicing in the rural or quasi-rural areas served by the institutions, and 100% of the graduates of Cal Northern School of Law are doing so.<sup>214</sup> In the attorney desert that is Kings County, which has the worst attorney-to-resident ratio in the State, a full third of the members of the bar are graduates of the San Joaquin College of Law, located in neighboring Fresno County.<sup>215</sup>

This phenomenon in turn raises the issue of the California Bar Exam “cut score,” the score required to pass the California Bar exam. The bar pass rate in California is notoriously low, and a 2018 study by the California Judiciary Committee suggested that lowering the cut score—and thus raising the bar pass rate—would not only increase the diversity of the profession, it could also serve to get more lawyers into the state’s rural reaches.<sup>216</sup> California authorities have thus far, however, chosen not to alter the cut score.<sup>217</sup>

## 5. Conclusion

California is a state with enormous resources, and it could do more to alleviate its rural attorney deficits and close the justice gap that falls across the rural-urban axis. But California is also a state in which rural people and rural interests have very little political capital.<sup>218</sup> Indeed, following the 2016 Election, the collective clout of rural California has plummeted further in the context of a decidedly blue state.<sup>219</sup> The cultural divide between rural and urban California thus grows sharper still, which does not bode well for the state’s rural reaches.

One consequence of this rural marginalization is that few entering the legal profession in California appear interested in rural practice, and those who would seriously consider it are unlikely to undertake such an endeavor because of the strictures associated with student debt. Another consequence of California’s metrocentric attitudes is that institutional actors such as the State Bar, the California Assembly, and the state’s ABA-AALS Accredited law schools are unlikely to prioritize programs such as stipends or loan repayment assistance for rural lawyers in private practice. Yet such programs will probably be necessary to channel more lawyers to the state’s underserved rural reaches.

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students who graduated in 2013, and the percentage of students employed in 2014, 2015, and 2016 for 35 non-AALS-ABA accredited law schools).

<sup>213</sup> E-mail from Mitch Winick, President and Dean, Monterey Coll. of Law, to Lisa R. Pruitt, Professor of Law, Univ. of Cal., Davis (Mar. 20, 2018, 8:28 AM) (on file with the Harvard Law School Library). See also Christopher Chavis, *Location, location, location: rural law schools and their roles in the rural lawyer shortage*, LEGAL RURALISM BLOG (July 14, 2017, 5:29 PM), <http://legalruralism.blogspot.com/2017/07/location-location-location-rural-law.html> [https://perma.cc/T325-KPXN]. See generally George Critchlow, *Beyond Elitism: Legal Education for the Public Good*, 46 TOLEDO L. REV. 313 (2015) (reassessing the current, elitist model of legal education and drawing out a new public interest-minded legal education system).

<sup>214</sup> E-mail from Winick, *supra* note 213.

<sup>215</sup> E-mail from Alicia Wrest, Assoc. Academic Dean, San Joaquin College of Law, to Lisa R. Pruitt, Professor of Law, Univ. of Cal., Davis (Mar. 14, 2018 1:04 PM) (on file with the Harvard Law School Library).

<sup>216</sup> See “Declining Passage Rates on the California Bar Exam: Possible Explanations and Impacts,” Hearing Background Paper, p. 28, California Assembly Committee on Judiciary, Feb. 14, 2017, available at <http://ajud.assembly.ca.gov/sites/ajud.assembly.ca.gov/files/Background%20Paper%202.14.17.pdf>.

<sup>217</sup> Stephanie Francis Ward, *Cut Score for California Bar Exam to Stay at 1440—For Now*, ABA JOURNAL (Oct. 18, 2017), [http://www.abajournal.com/news/article/cut\\_score\\_for\\_california\\_state\\_bar\\_to\\_stay\\_at\\_1440\\_for\\_now](http://www.abajournal.com/news/article/cut_score_for_california_state_bar_to_stay_at_1440_for_now).

<sup>218</sup> See Foon Rhee, *Rural California is Getting Short End of the Stick*, THE SACRAMENTO BEE (Feb. 5, 2018), <http://www.sacbee.com/opinion/opn-columns-blogs/foon-rhee/article198116484.html>.

<sup>219</sup> See Phillip Reese, *Clinton May Have Won California- but Trump Carried its White Rural North*, THE SACRAMENTO BEE (Nov. 16, 2016), <http://www.sacbee.com/site-services/databases/article115280078.html>.



## B. Georgia

Like many of its Southern counterparts,<sup>220</sup> Georgia is more rural than the average state.<sup>221</sup> More than 65% of Georgia’s 10.3 million residents live in places that are “rural” under the U.S. Census Bureau definition.<sup>222</sup> Many residents in the state’s rural areas are poor, with few prospects for economic opportunity and upward mobility. Almost three-quarters of Georgia residents living below the federal poverty line reside outside of the five counties that constitute metropolitan Atlanta.<sup>223</sup> Of the 353 persistent poverty counties in the United States—those with poverty rates of 20 percent or higher as measured by the Census in 1980, 1990, and 2000 and the five-year average of American Community Surveys in 2007–2011—49 were in Georgia, and 41 of those 49 were non-metro counties.<sup>224</sup> Of those 49 counties, 18 were majority nonwhite in 2004.<sup>225</sup>

Like many other states in the South—and unlike many of the other states surveyed in this article—a high proportion of Georgia’s rural population is disproportionately African-American. While the national percentage of the rural and small-town population that is African-American is 8.4 percent,<sup>226</sup> 25.8% of Georgia’s rural and small-town population is African-American.<sup>227</sup> To provide further contrast, the African-American rural and small-town population is 2.6 percent in California, and one percent or less in each of the other states surveyed.<sup>228</sup>

Georgia is divided into 159 counties, nearly three times as many as California,<sup>229</sup> a state with a population three times as great as Georgia’s.<sup>230</sup> The average size of a Georgia County is just 374 square miles, about 13% of the size of an average California county, which is 2,822 square miles.<sup>231</sup> More than half of Georgia’s counties have populations of fewer than 10,000 residents.<sup>232</sup>

Although there are some stark differences, as noted above, like many of the other states discussed in this article, Georgia’s rural population is underserved. Several factors are responsible for the existence of legal deserts within Georgia. Most lawyers and legal services are concentrated within the metropolitan Atlanta area, leaving a dearth of lawyers and legal services outside that conurbation. Moreover, as the state bar greys, few young lawyers are willing to locate and practice in the state’s most rural areas. In addition, infrastructural factors—such as limited internet, vehicle, and public transportation access—create problems for those attempting to reach lawyers or represent themselves.

This section begins by providing background on the current resources available to address civil legal needs in rural parts of the state. It then describes how the number, geographic distribution, and changing demographic of attorneys in Georgia, in addition to other factors like access to transportation and the internet, have led to the creation of legal deserts across the state. Last, it discusses efforts taken or

<sup>220</sup> See *Growth in Urban Population Outpaces Rest of Nation*, *Census Bureau Reports*, U.S. CENSUS BUREAU (Mar. 26, 2012), [https://www.census.gov/newsroom/releases/archives/2010\\_census/cb12-50.html](https://www.census.gov/newsroom/releases/archives/2010_census/cb12-50.html) (the Midwest and South have lower percentages of urban population than the United States as a whole) [<https://perma.cc/M7BG-3YYY>].

<sup>221</sup> See Table 1.

<sup>222</sup> *Id.* Table 1.

<sup>223</sup> Kathryn Hayes Tucker, *Rural Lawyer Shortage Concerns Leaders of the Legal Profession; Access to Justice: The Rural Lawyer Gap*, *DAILY REPORT* (Jan. 8, 2015), <https://www.law.com/dailyreportonline/almID/1202714375765> [<https://perma.cc/3UML-JKAF>] (“Metro Atlanta has 28 percent of the state’s population living below federal poverty limits, while the other 154 counties have 72 percent of the state’s poor.”).

<sup>224</sup> See *Description and Maps*, U.S. DEP’T AGRIC., ECON. RES. SERV., <https://www.ers.usda.gov/data-products/county-typology-codes/descriptions-and-maps.aspx> [<https://perma.cc/KE5E-NF92>].

<sup>225</sup> RURAL POLICY RESEARCH INST., *DEMOGRAPHIC AND ECONOMIC PROFILE: GEORGIA 4* (July 2006) (based on data from the U.S. Department of Agriculture’s Economic Research Service and the U.S. Census Bureau, there were 18 counties in Georgia in which the white population accounted for less than 50% percent of total population in 2004).

<sup>226</sup> See *RACE & ETHNICITY IN RURAL AMERICA*, *supra* note 60, at 9.

<sup>227</sup> *Id.* at 10. The percentages in other Southern states are similarly high: Alabama (21.9%), Louisiana (31%), Mississippi (39.2%), and South Carolina (36.4%). *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> Table 7

<sup>230</sup> Tables 1 and 7.

<sup>231</sup> Table 7.

<sup>232</sup> Table 7.

currently underway to address the access to justice gap in rural parts of the state and ways in which law schools and law students can help to close that gap.

We are aware that a number of unique factors impact access to criminal justice in rural parts of Georgia and the South. These issues include not just access to counsel, but also structural issues such as the infrequency with which court is held.<sup>233</sup> We have not attempted to address those issues in any detail in this article<sup>234</sup> but are mindful that—as with many rural justice issues—they require far more research than has yet been done.

### 1. *Institutional Framework and Resource Allocation*

Outside the Atlanta metro area, the primary provider of civil legal services for those who cannot afford an attorney is the Georgia Legal Services Program (GLSP). GLSP serves all 154 Georgia counties outside of the five core metro-Atlanta counties of Fulton, DeKalb, Clayton, Cobb, and Gwinnett.<sup>235</sup> Currently, more than two million Georgians are eligible to receive legal aid from GLSP.<sup>236</sup> In 2016, GLSP had 67 total lawyers on staff—57 lawyers serving legal aid clients (some on a part-time basis), three lawyers serving farmworkers across the state, and seven lawyers who either do not provide direct service to clients, or do so only in specialized fields.<sup>237</sup>

Many of GLSP’s lawyers are responsible for covering several different counties, often at quite a distance. For example, just seven attorneys work in the Albany-Valdosta office, which is responsible for covering a 29-county area. Already serving a wide area across the southwest side of the state, the Albany office had to take on additional clients from southeast Georgia when GLSP closed its Valdosta office after the recession.<sup>238</sup> GLSP lawyers staffing the office sometimes travel hundreds of miles in a day.<sup>239</sup> As of 2015, there were 166,000 people living at or below the poverty level in the Albany-Valdosta service area,<sup>240</sup> because GLSP will consider clients with incomes totaling up to 200% of the federal poverty level, the number of potential clients those seven lawyers might serve is significantly greater.<sup>241</sup> According to Phyllis Holmen, former Executive Director of GLSP, every rural legal aid lawyer in Georgia “has 13,000 potential clients, based on the poverty population of the area they serve.”<sup>242</sup>

For the 2018 calendar year, LSC awarded a total of just over \$12 million dollars in grant funding the two primary Georgia legal services providers, Atlanta Legal Aid Society and GLSP.<sup>243</sup> Atlanta Legal Aid serves the five-county Atlanta metropolitan area, while GLSP is responsible for serving the rest of the state, including all of its rural population. For 2018, GLSP received \$8,136,667 in LSC funding to support

<sup>233</sup> For example, a recent report by the Sixth Amendment Center on felony representation in Mississippi pointed out that in some rural counties, where the district attorney makes grand jury presentations only twice a year, an indigent criminal defendant may wait for at least six months and as long as 12 months after arrest before he can be indicted, arraigned, and assigned counsel. SIXTH AMENDMENT CENTER, THE RIGHT TO COUNSEL IN MISSISSIPPI: EVALUATION OF ADULT FELONY TRIAL LEVEL INDIGENT DEFENSE SERVICES 65-66 (March 2018), available at <http://sixthamendment.org/mississippi-report/>.

<sup>234</sup> See *supra* notes 15-17 and accompanying text for a brief discussion of criminal justice trends in rural areas.

<sup>235</sup> *What We Do*, GEORGIA LEGAL SERVICES PROGRAM, <http://www.glsp.org/what-we-do/> [<https://perma.cc/ME5K-3AVY>] (“Georgia Legal Services Program (GLSP) is a statewide non-profit law firm serving 154 counties in Georgia outside the five-county metropolitan Atlanta area. Those five counties are served by the Atlanta Legal Aid Society”). The Atlanta Legal Aid Society provides civil legal aid to low-income residents in Fulton, DeKalb, Gwinnett, Cobb, and Clayton counties. ATLANTA LEGAL AID SOCIETY, <https://www.atlantalegalaid.org/> [<https://perma.cc/9ALE-6VMF>].

<sup>236</sup> Memorandum from Phyllis J. Holmen, Exec. Dir., Ga. Legal Servs. Program, to Cynthia H. Clanton, Dir., Admin. Office of the Courts (on file with the Harvard Law School Library) (enclosing Georgia Legal Services Program, Legal Assistance to Families Victimized by Domestic Violence Project, Grant Application for Fiscal Year 2018, at 1 (May 24, 2017)).

<sup>237</sup> See Memorandum from Phyllis Holmen, Exec. Dir., Ga. Legal Servs. Program (Jan. 17, 2017) (on file with the Harvard Law School Library).

<sup>238</sup> Tucker, *supra* note 223.

<sup>239</sup> *Id.*

<sup>240</sup> See Memorandum from Holmen, *supra* note 237.

<sup>241</sup> See *id.*; *supra* note 237.

<sup>242</sup> Tucker, *supra* note 223.

<sup>243</sup> LSC 2018 Grant Award, LEGAL SERVS. CORP., <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/lsc-2018-grant-awards> [<https://perma.cc/39DL-6V8B>] (click on “grant announcement and funding decision chart”)

its basic field services and \$266,288 to support its agricultural worker program.<sup>244</sup> That funding comprises a significant portion of GLSP’s budget: In 2016, LSC funding represented 61 percent of the organization’s income.<sup>245</sup> The only state funding GLSP received in Fiscal Year 2018 was a grant of \$1,607,352 to provide civil legal assistance to low-income victims of domestic violence and their children.<sup>246</sup> Yet GLSP remains the primary source of civil legal assistance for the 72 percent of the state’s poor that live outside metropolitan Atlanta.<sup>247</sup>

Although not specific to legal services, there is increased interest in Georgia in addressing the state’s rural areas. Georgia’s House of Representatives created a Rural Development Council during the 2017 legislative session to address the slowed economic recovery and population loss in rural parts of the state.<sup>248</sup> One factor driving the need for such an entity is that 124 of Georgia’s 159 counties have experienced less than five percent growth over the last five years.<sup>249</sup> The Council issued a report in 2017 suggesting a number of recommendations for legislative action during the 2018 legislative session to, among other things, incentivize rural living (especially for professional, high-wage earners), increase broadband availability, encourage economic development, increase the number and quality of educational opportunities, and stabilize rural health systems.<sup>250</sup> Such efforts clearly demonstrate concern about the state’s rural areas and residents, yet we know very little about how individuals in these areas access and interact with the legal system. We also do not have empirical data on whether they have particular legal needs that remain unaddressed, or how the failure to address those needs may affect any number of the above areas, such as health, housing, and employment.

With respect to the state’s institutional framework and the potential for statewide reform, it is worth noting that in addition to having an abnormally high number of counties—159, second only to Texas,<sup>251</sup> and nearly three times as many as California—Georgia’s state court system is decentralized.<sup>252</sup> As a result, each of Georgia’s 919 trial-level courts<sup>253</sup> may function in a slightly different manner. Access to justice reforms can thus be very difficult to implement or enforce uniformly across the entire state.

## 2. *Community Legal Needs and Resource Shortfalls*

To date, there has not been a specific assessment of legal needs in rural parts of the state. The most recent statewide legal needs assessment, conducted in 2007 and 2008, found that 62.2 percent of households experienced one or more civil legal problems in 2007, spanning several areas, including:

<sup>244</sup> *Id.*

<sup>245</sup> Georgia Legal Services Program 2016 Annual Report 22, available at [http://www.glsp.org/wp-content/uploads/2012/01/2016\\_Annual-Report.pdf](http://www.glsp.org/wp-content/uploads/2012/01/2016_Annual-Report.pdf).

<sup>246</sup> *Judicial Council Committee Awards Grants for Civil Legal Services*, JUDICIAL COUNCIL OF GA., ADMIN. OFFICE OF THE COURTS (July 6, 2017) <http://georgiacourts.gov/content/judicial-council-committee-awards-grants-civil-legal-services> [https://perma.cc/PFY6-A6KY].

<sup>247</sup> Tucker, *supra* note 223.

<sup>248</sup> HOUSE OF REPRESENTATIVES, RURAL DEV. COUNCIL, RECOMMENDATIONS OVERVIEW 3 (2017), [http://www.house.ga.gov/Documents/CommitteeDocuments/2017/HouseRuralDevelopmentCouncil/2017\\_FINAL\\_Recommendations.pdf](http://www.house.ga.gov/Documents/CommitteeDocuments/2017/HouseRuralDevelopmentCouncil/2017_FINAL_Recommendations.pdf) [https://perma.cc/7JLR-E3XF].

<sup>249</sup> *Tax breaks, fast internet proposed to bolster rural Georgia*, ATLANTA JOURNAL-CONSTITUTION (Dec. 16, 2017, 10:05 AM) <https://www.ajc.com/news/state--regional/tax-breaks-fast-internet-proposed-bolster-rural-georgia/Csmxv2epQs1wKZAnnPtROM/> [https://perma.cc/JZ2E-SESW].

<sup>250</sup> HOUSE OF REPRESENTATIVES, RURAL DEV. COUNCIL, *supra* note 248, at 4–7.

<sup>251</sup> See *infra* note 259 and accompanying text.

<sup>252</sup> See JUDICIAL COUNCIL OF GA. ADMIN. OFFICE OF THE COURTS, GEORGIA COURT GUIDE TO STATISTICAL REPORTING 4 (Feb. 4, 2016), <http://www.georgiacourts.org/sites/default/files/research/Georgia%20Court%20Guide%20to%20Statistical%20Reporting.v4%20r.pdf> [https://perma.cc/9SNB-6UYU] (“Due to Georgia’s non-centralized court system, each class of court and their respective circuits, counties, and cities vary in their administrative structure.”).

<sup>253</sup> *Your Guide to the Georgia Courts*, JUDICIAL COUNCIL OF GA. ADMIN. OFFICE OF THE COURTS (May 2011), <http://georgiacourts.gov/sites/default/files/publications/Guide%20to%20GA%20Courts2011.pdf> [https://perma.cc/SJ7J-K6UF]. This includes trial-level courts operating throughout the state—magistrate, probate, juvenile, state, and superior courts—as well as municipal courts operating locally. *Id.*

consumer problems (22.3%), housing (15.8%), health (8.9%), employment (8.4%), public benefits (7.7%), education (6.3%), family (5.8%), and other problems.<sup>254</sup> Legal and social service providers identified the most important needs experienced by their clients as housing (20.5 percent) and family (20 percent) law.<sup>255</sup> Housing and family law needs were also the two areas in which assistance was most commonly sought, with consumer problems a close third.<sup>256</sup> Most of the people encountering such legal problems did so without the assistance of an attorney—nearly three-quarters of respondents tried to resolve the issue on their own, 17.1 percent took no action at all, and only 9.1 percent were able to obtain help from an attorney.<sup>257</sup>

While there is no specific research on how these needs may differ across urban and rural areas—if there is in fact such a difference—the resources available to address those needs vary greatly. The notable difference in access to legal services between Atlanta and Georgia’s more rural areas can be visualized on the map of access to justice metrics published by the Center for Access to Justice at Georgia State University College of Law in August 2017.<sup>258</sup> The map—which was built in partnership with Dr. Joshua Weitz, Professor of Biological Sciences at Georgia Institute of Technology, and Chad Wigington, then a Ph.D. student in Bioinformatics—is an online repository of access-to-justice information for each of Georgia’s 159 counties.<sup>259</sup> For each county, the interactive map<sup>260</sup> provides information regarding total population; the number of available legal services lawyers<sup>261</sup> and active lawyers;<sup>262</sup> and the percentage of county residents who speak no English at home,<sup>263</sup> live at or below the poverty line,<sup>264</sup> have no internet access at home,<sup>265</sup> have no access to a household vehicle,<sup>266</sup> and live within half a mile of public transportation.<sup>267</sup>

Perhaps the most obvious metric shedding light on access to justice—at least to those in the legal profession—is the number of attorneys available to provide representation if and when needed. The 154 counties that are not part of metropolitan Atlanta are home to sixty-five percent of the Georgia’s

<sup>254</sup> A.L. BURRUSS INST. OF PUB. SERV. AND RESEARCH, KENNESAW STATE UNIV., CIVIL LEGAL NEEDS OF LOW AND MODERATE INCOME HOUSEHOLDS IN GEORGIA: A REPORT DRAWN FROM THE 2007/2008 GEORGIA LEGAL NEEDS STUDY 11–12 (June 2009), [https://www.americanbar.org/content/dam/aba/administrative/delivery\\_legal\\_services/downloads/georgia\\_legal\\_needs\\_study.aut\\_hcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/downloads/georgia_legal_needs_study.aut_hcheckdam.pdf) [<https://perma.cc/XYF2-9Q5T>].

<sup>255</sup> *Id.* at 22.

<sup>256</sup> *Id.* at 23.

<sup>257</sup> *Id.* at 25.

<sup>258</sup> *Access to Justice Map Underscores Disparities in Legal Access across the State*, GA. STATE UNIV. COLL. OF LAW (Aug. 29, 2017), <http://law.gsu.edu/2017/08/29/access-to-justice-map-underscores-disparities-in-legal-access-across-the-state/> [<https://perma.cc/62FR-GQNB>].

<sup>259</sup> *Id.* Relative to its geographical area, Georgia has a disproportionately large number of counties. See *2010 Census: Georgia Profile*, U.S. CENSUS BUREAU, [https://www2.census.gov/geo/pdfs/reference/guidestloc/13\\_Georgia.pdf](https://www2.census.gov/geo/pdfs/reference/guidestloc/13_Georgia.pdf) [<https://perma.cc/4FXG-6E4M>]. After Texas, Georgia has the most counties out of any American state, despite being the twenty-first largest state by land area. *Id.*

<sup>260</sup> See *Center for Access to Justice: Research*, GA. STATE UNIV. COLL. OF LAW [hereinafter Center Map], <http://law.gsu.edu/center-access-justice/research/> [<https://perma.cc/2T9Y-YD6A>].

<sup>261</sup> See *id.* Atlanta Legal Aid Society’s numbers include both county-specific lawyers as well as 22.5 additional attorneys who work for Atlanta Legal Aid on program-wide projects. E-mail from K. Verrill, Dir. of Grants and Innovation, Atlanta Legal Aid Soc’y, Inc., to Darcy McLean Meals (Feb. 7, 2017, 4:12 PM) (on file with the Harvard Law Library). For example, Cobb County has six attorneys, but its total also includes one-fifth of the program-wide attorneys. *Id.*

<sup>262</sup> See Georgia State Bar Lawyer Demographics Spreadsheet (Nov. 1, 2016) (on file with the Harvard Law School Library) (providing numerical breakdown of number of active lawyers in Georgia by county).

<sup>263</sup> See *America’s Civil Courts: Whom Do We Serve?*, SELF-REPRESENTED LITIG. NETWORK <https://srln.maps.arcgis.com/apps/MapJournal/resources/tpl/viewer/print/print.html?appid=7bed22dba4ec45f281b766181b862156> [<https://perma.cc/9QSV-6H4R>] (using 5-year estimates from the Census Bureau’s American Community Survey from 2014).

<sup>264</sup> See *id.*

<sup>265</sup> See *id.*

<sup>266</sup> See *id.*

<sup>267</sup> See *AllTransit Metrics*, CENTER FOR NEIGHBORHOOD TECHNOLOGY, <http://alltransit.cnt.org/metrics/> [<https://perma.cc/7ZVG-2E8E>]. (Enter a location name, e.g. Fulton County, Georgia, then click on “Equity” to see metrics relating to proximity to public transit. Note that the Center for Neighborhood Technology’s public transit data is only consistently available for counties with more than 100,000 residents. Less populous counties may therefore reflect zero public transit even where it may be available.)

population, but only thirty percent of the state’s attorneys.<sup>268</sup> In early 2003, the Georgia Bar reported having 26,936 active members, of which 18,000 resided within 60 miles of Atlanta.<sup>269</sup> Forty percent worked in Fulton County alone, where the state’s capital is located.<sup>270</sup> As of November 2016, sixty-four of Georgia’s 159 counties had ten or fewer active lawyers residing in the county,<sup>271</sup> and thirty-two counties had five or fewer active lawyers.<sup>272</sup> Five counties—Baker, Clay, Echols, Schley, and Webster—did not have a single resident who is an active attorney.<sup>273</sup> Four out of those five counties without active attorneys are located in the southwest corner of the state. As demonstrated by the Center’s access-to-justice map, most of the Georgia counties with ten lawyers or fewer are surrounded by many other counties with the same characteristic, meaning that finding a lawyer in a neighboring county may also be difficult.<sup>274</sup>

Various other factors—aside from the availability of an attorney, whether private or legal aid—can intersect to create a particularly challenging route to accessing legal services or the court system. Consider two counties in the Albany-Valdosta service area, Clay County and Echols County, both of which are served by the Georgia Legal Services Program. Clay County, located in the southwest corner of the state along the Alabama border, has a population of just 3,183, of which nearly half are at or below the poverty level.<sup>275</sup> The county’s population is 60% African-American and less than one percent of Hispanic or Latinx origin.<sup>276</sup> There are no active lawyers in the county, where public transit is sparse and more than a quarter of the county’s population has no access to a vehicle. Home internet access in Clay County is nearly non-existent.<sup>277</sup>

Echols County, located along the Florida border, is similar in size with a population of just over 4,000 residents and also has no active lawyers. In contrast to Clay County, 29 percent of Echols County is of Hispanic or Latinx origin, according to the Census.<sup>278</sup> Public transportation is similarly lacking, although only five percent of households are without access to a vehicle. The two counties are vastly different, however, in terms of language access. Only 3.2 percent of Clay County’s residents do not speak English at home,<sup>279</sup> while 26 percent of Echols County residents do not speak English at home,<sup>280</sup> creating an additional barrier to justice.

Aside from GLSP, these more rural counties have few resources to address the legal needs of low-income Georgians, at least in comparison with those available in more urban areas.<sup>281</sup> Most legal non-

<sup>268</sup> Tucker, *supra* note 223.

<sup>269</sup> James L. Hunt, *Legal Profession*, NEW GA. ENCYCLOPEDIA (July 25, 2016),

<http://www.georgiaencyclopedia.org/articles/government-politics/legal-profession> [https://perma.cc/EG4W-3DGP].

<sup>270</sup> *Id.*

<sup>271</sup> *Id.* Of the 64 counties with 10 active attorneys or fewer, African Americans constitute at least 40% of the population in 21 counties. *All Counties in Georgia: Census 2010*, CENSUSVIEWER, <http://censusviewer.com/counties/GA> [https://perma.cc/5H83-U99E].

<sup>272</sup> Center Map, *supra* note 260.

<sup>273</sup> Center Map, *supra* note 260.

<sup>274</sup> It is also true that because Georgia is second highest nationally in number of counties, but not proportionally ranked in terms of land mass, *see All Counties in Georgia: Census 2010*, *supra* note 271, there may be instances in which a county with few lawyers is actually less isolated than it seems, given its geographic proximity to other counties.

<sup>275</sup> *See* Center Map, *supra* note 260.

<sup>276</sup> *See Population of Clay County, Georgia*, CENSUSVIEWER, <http://censusviewer.com/county/GA/Clay> [https://perma.cc/BYU9-LA9V].

<sup>277</sup> *See id.*

<sup>278</sup> *See Population of Echols County, Georgia*, CENSUSVIEWER, <http://censusviewer.com/county/GA/Echols> [https://perma.cc/2RHL-Y3SG].

<sup>279</sup> *See Population of Clay County*, *supra* note 276.

<sup>280</sup> *See Population of Echols County*, *supra* note 278. South Georgia has a significant farm economy, of which Echols County is a part. A 2012 Census of Agriculture lists 40 farms in Echols County, with the average farm size measuring 333 acres. Four farms in 2012 had sales of \$500,000 or more. *See 2012 Census of Agriculture, County Profile: Echols County, Georgia*, U.S. DEP’T OF AGRIC., [https://www.agcensus.usda.gov/Publications/2012/Online\\_Resources/County\\_Profiles/Georgia/cp13101.pdf](https://www.agcensus.usda.gov/Publications/2012/Online_Resources/County_Profiles/Georgia/cp13101.pdf) [https://perma.cc/K4K4-UL58].

<sup>281</sup> A general online resource hosted by legal aid organizations in Georgia provides information on a range of legal issues, in addition to forms and documents that can be used by self-represented litigants. *See generally* GEORGIALEGALAID.ORG, <https://www.georgialegalaid.org/> [https://perma.cc/PZX2-KD3S].

profits and coordinators of pro bono legal services in Georgia are concentrated in the Atlanta metropolitan area. And there is little reason to think—at least in terms of the number of lawyers available—that the trend will change anytime soon. The lawyers practicing in more rural counties are getting older, consistent with the overall greying of the bar. Nationally, the median attorney age has risen from 39 in 1980 to 49 in 2005.<sup>282</sup> Following that trend, as of August 2016, 57 percent of Georgia’s active lawyers were 45 or older.<sup>283</sup> The number of Georgia lawyers nearing retirement age is increasing, especially in more rural parts of the state where lawyers are already in short supply.<sup>284</sup>

Assuming that lawyers age 65 or older are retired or will soon retire, calculations from November 2016 demonstrate that 11 counties will not have any active lawyers and 40 counties will have five or fewer active lawyers; in total, 67 counties—or 42% of Georgia’s counties—will have 15 lawyers or fewer.<sup>285</sup> Thus, the term “legal desert” will even more accurately describe large areas of the state. In rural areas of Georgia, baby boomer lawyers who manage solo practices are reluctant to retire because they struggle to find young lawyers who are ready and willing to succeed them in their practices.<sup>286</sup> To innovate around this issue, the State Bar of Georgia’s Young Lawyer’s Division launched the Succession Planning Pilot Program in 2014, which connects retiring solo practitioners with new law graduates, facilitating the eventual succession in the management, and potentially ownership, of the practice.<sup>287</sup>

Compounding the aging-out problem is the fact that younger lawyers graduating from law schools in Atlanta, Macon, and Athens are hesitant to relocate to rural areas to practice. This is in spite of the fact that Georgia’s law schools are some of the most affordable in the country—Georgia State Law topped National Jurist’s 2017 Best Value Law Schools ranking with tuition at \$16,858 and average student debt below \$65,000 (the University of Georgia ranked second, with tuition at \$19,488 and average student debt just over \$82,000).<sup>288</sup> New lawyers’ uncertainty about the sustainability of a healthy law practice in such sparsely populated areas may be understandable. Mike Monahan, the pro bono director for GLSP and a former legal services lawyer in South Georgia, acknowledges that “[e]arning a living in a small town isn’t easy.”<sup>289</sup> And while as of 2015, there were 1,300 volunteer lawyers available in rural Georgia available to assist indigent clients, attracting new law school graduates to rural communities with the hope that they will join existing law practices—or build and maintain new ones—has been difficult.<sup>290</sup>

Retired Pataula Circuit Superior Court Judge Ronnie Joe Lane, former executive director of the Georgia Judicial Qualifications Commission, has tried to pitch law students on the benefits of rural practice—including a closer-knit community, lower-cost living, and an easier commute—without much success: “All they have to do is go home, keep the overhead low, rent the cheapest office they can find and hire a part-time secretary. . . . The problem is young lawyers don’t see it as a good opportunity.”<sup>291</sup>

<sup>282</sup> Aging Lawyers Task Force Presentation (Oct. 21, 2016) (on file with Harvard Law Library) (relying on data gathered from The Lawyer Statistical Report, American Bar Association and the State Bar of Georgia Membership Department).

<sup>283</sup> *Id.*

<sup>284</sup> See Sharri Edenfield, *Meeting the Succession Plan Challenge*, GA. BAR JOURNAL (2015), [http://digitaleditions.walsworthprintgroup.com/article/From\\_the\\_YLD\\_President/1976689/253199/article.html](http://digitaleditions.walsworthprintgroup.com/article/From_the_YLD_President/1976689/253199/article.html) [<https://perma.cc/Z42T-ZUEH>].

<sup>285</sup> See Georgia State Bar Lawyer Demographics Spreadsheet, *supra* note 262.

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> See Mike Stetz, *Best Value Law Schools*, THE NAT’L JURIST, Fall 2017, at 22 <https://cdn.coverstand.com/52741/443086/e79fcab7418071c3109ae535ca7b3e72c697aaf.5.pdf> [<https://perma.cc/RM9E-LRGJ>].

<sup>289</sup> Tucker, *supra* note 223.

<sup>290</sup> See *id.* Taier Perlman has explained the challenges that may face new attorneys contemplating rural practice: “[T]he challenges of solo or small firm practice are well documented, especially in rural areas, where professional isolation is very real and adds to a practitioner’s stress-levels. A lack of mentoring, professional development and networking opportunities is a major disadvantage. Not being able to talk through a legal issue with a peer, or check in with a mentor attorney more versed in an area of law, has a significant psychological impact. Further, rural attorneys face unique legal practice obstacles: more frequent conflicts of interests that arise when you are the only lawyer in town, substantial travel burdens (time and cost) for court appearances, the strain of running a general practice, and a client base that often cannot pay the full bill for services.” Taier Perlman, *Lacking Lawyers: A Rural Business’ Disadvantage*, New York State Bar Association Government, Law and Policy Journal, Vol. 17, No. 1, at 56 (2017).

<sup>291</sup> Tucker, *supra* note 223.

### 3. Policy Efforts to Confront Justice Challenges

Former State Bar President Patrise Perkins-Hooker attempted to address the rural attorney shortage in 2015 by calling on state legislators to enact the Attorneys for Rural Areas Assistance Act, which would have provided loan repayment assistance for young lawyers who “commit to working in rural communities for at least five years and to donate a portion of their services to poor clients.”<sup>292</sup> Unfortunately, the attempt was unsuccessful.<sup>293</sup>

Georgia is once again attempting to address the rural justice gap, this time through a recent Justice for All grant awarded to the state by the Public Welfare Foundation and the National Center for State Courts.<sup>294</sup> Georgia was one of seven states—and the only state in the South—to receive the grant. The project provides support for state assessment and strategic planning efforts to ensure that everyone across the state has meaningful access to civil justice.<sup>295</sup> Given limited legal resources across more rural parts of the state, one of the initiatives Georgia’s Justice for All task force has focused on is the use of law libraries to provide critical legal resources and advice.<sup>296</sup> Laureen Kelly, a member of the Justice for All working group, runs the Dougherty County Law Library in Albany, Georgia, roughly 180 miles south of Atlanta.<sup>297</sup> Albany is the regional hub for the southwest corner of the state, yet is not far from Clay County, and 32.4 percent of Dougherty County’s population is at or below the poverty level.<sup>298</sup> The law library assists users from 25 counties,<sup>299</sup> and many of those counties are legal deserts. Three of the neighboring counties served by the library, for example, have zero (Baker) and seven (Lee and Terrell) lawyers, respectively.<sup>300</sup>

The Dougherty County Law Library is a free, public, and independent court-based resource for individuals seeking legal information.<sup>301</sup> Library staff cannot provide legal advice to visitors, like how to interpret case law or how to proceed in court; instead, the staff offers visitors access to various legal reference materials and specialized training on how to do online legal research.<sup>302</sup> In addition to providing forms for unrepresented litigants in over fifteen different areas of civil law, the library website provides links to a robust toolkit of information, which includes a video on self-representation and discusses topics like “how to serve papers on [an] opposing party.”<sup>303</sup> On the third Friday of every month, the Law Library holds a family law class to discuss common issues that arise in domestic disputes and provide general information on lawsuits and hearings.<sup>304</sup> Currently, the law library provides a range of services to help self-represented litigants, including assistance with legal research, referrals to legal aid providers, some

<sup>292</sup> *Id.*

<sup>293</sup> Ga. H. B. 236, 2015 Gen. Assemb., Reg. Sess. (Ga. 2015) <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/236> [<https://perma.cc/TWC3-5TZN>].

<sup>294</sup> *Justice for All Grants Announcement*, PUB. WELFARE FOUND., NAT’L CTR. FOR STATE COURTS (Nov. 2016), <http://www.publicwelfare.org/wp-content/uploads/2016/11/JFA-Announcement-Awards.pdf> [<https://perma.cc/VGL6-KKW7>].

<sup>295</sup> *Id.*

<sup>296</sup> Lucas is a member of the working group convened through the State Bar of Georgia’s Access to Justice Committee to implement the Justice for All strategic action planning grant.

<sup>297</sup> Kathryn Hayes Tucker, *Albany’s Law Librarian Tries to Help People Who Can’t Get Lawyers*, DAILY REPORT (Jan. 8, 2015), <https://www.law.com/dailyreportonline/almID/1202714381933> [<https://perma.cc/G7T4-9FND>].

<sup>298</sup> Center Map, *supra* note 260.

<sup>299</sup> Georgia Justice for All Strategic Action Plan 16 (Dec. 15, 2017) (on file with the Harvard Law Library) (plan was submitted to the National Center for State Courts).

<sup>300</sup> Center Map, *supra* note 260.

<sup>301</sup> See *About the Dougherty County Law Library*, CITY OF ALBANY & OF DOUGHERTY COUNTY, <http://311answers.com/content/1800/2889/3011/4534/default.aspx> [<https://perma.cc/L37C-9VNS>].

<sup>302</sup> *Id.*; *Dougherty County Law Library Website Disclaimer*, CITY OF ALBANY, GA., <http://311answers.com/content/1800/2889/3011/3504/default.aspx> [<https://perma.cc/EU7S-G4XJ>].

<sup>303</sup> *About the Dougherty County Law Library*, *supra* note 301.

<sup>304</sup> *Law Library Calendar of Classes, 2016 to 2017*, CITY OF ALBANY, GA., [http://www.dougherty.ga.us/filestorage/2889/3011/Consumer\\_Law\\_Class\\_Calendar.pdf](http://www.dougherty.ga.us/filestorage/2889/3011/Consumer_Law_Class_Calendar.pdf) [<https://perma.cc/JY7M-QL78>].

explanation regarding the legal process, and making a variety of print and electronic materials available for reference.<sup>305</sup>

The services the law library provides are critical for those who need help when legal aid is at capacity, those who have legal needs that legal aid cannot address, and those who do not meet the income requirements to receive legal aid assistance but who also cannot afford a lawyer.<sup>306</sup> Many of the people the library serves do not have computers or tablets, and many of them cannot read or write.<sup>307</sup> And often they have other needs—such as unaddressed medical conditions—that can impede their ability to seek legal assistance.<sup>308</sup> The Judicial Council of Georgia’s Access, Fairness, Public Trust and Confidence Committee has assumed responsibility for implementing the Justice for All Working Group’s plan to expand Kelly’s library and make its self-help resource center model a pilot project other counties can replicate.

Support for projects like the Dougherty County Law Library result from recognition that legal needs in rural areas may require solutions different from those often prioritized in more urban areas, such as the use of technology and online resources to bridge access to justice.<sup>309</sup> Technology-based solutions may have more limited applicability in communities where such internet access is less readily available. And even when technology is available, people may not automatically turn to the internet as a source for legal assistance. The 2008 civil legal needs survey revealed that although roughly two-thirds of those surveyed had access to the internet, more than 94 percent of those surveyed had never used that resource to access legal forms online.<sup>310</sup> At the same time, given the paucity of lawyers living and working in more rural counties, it is unlikely that all of these individuals will be able to obtain direct legal representation to address their needs. Georgia Supreme Court Justice Nels Peterson, who also served on the Justice for All task force, recently endorsed a broader approach: “If we’re looking to expand access to justice, we have to think about access to justice as being more than access to a lawyer.”<sup>311</sup>

Another possibility the Justice for All task force has explored would capitalize on the central role places of worship and religious leaders play in the everyday lives of Georgia residents, particularly those in more rural areas of the state. These individuals and entities can be trained to identify those issues that could benefit from legal assistance and then be equipped with referrals and self-help resources to address congregants’ needs. Like medical-legal partnerships,<sup>312</sup> which have proven to be a successful model, such faith-based outreach efforts are premised on attempting to reach those in need of assistance where they are.<sup>313</sup> One model for such a program is the Tennessee Faith and Justice Alliance (TFJA). Created by the

<sup>305</sup> Georgia Justice for All Strategic Action Plan, *supra* note 299, at 19.

<sup>306</sup> Katheryn Tucker, *New Answer to Georgia’s Rural Lawyer Shortage: DIY*, DAILY REPORT (Nov. 16, 2017), <https://www.law.com/dailyreportonline/sites/dailyreportonline/2017/11/16/new-answer-to-georgias-rural-lawyer-shortage-diy/> [<https://perma.cc/KBM3-K457>].

<sup>307</sup> *See id.*

<sup>308</sup> *See id.* (describing instance where Kelly provided food to a diabetic who nearly fainted from low blood sugar in the midst of dealing with a stressful legal problem).

<sup>309</sup> *See also* Center Map, *supra* note 260, which demonstrates the low levels of home internet access available across the state.

<sup>310</sup> *See supra* note 254, at 26.

<sup>311</sup> *See* Tucker, *supra* note 223.

<sup>312</sup> *See* Bharath Krishnamurthy et al., *What We Know and Need to Know about Medical-Legal Partnership*, 67 S.C. L. REV. 377, 379 (2016) (“Through the medical-legal partnership approach, hospitals and health centers partner with civil legal aid resources in their community to: (1) train staff at the hospitals and health centers about how to identify health-harming legal needs; (2) treat health-harming legal needs through a variety of legal interventions; (3) transform clinic practice to treat both medical and social issues that affect a person’s health and well-being; and (4) improve population health by using combined health and legal tools to address wide-spread social problems, such as housing conditions, that negatively affect a population’s health and well-being.”).

<sup>313</sup> *See, e.g.,* Mary M. O’Sullivan et al., *Environmental Improvements Brought by the Legal Interventions in the Homes of Poorly Controlled Inner-city Adult Asthmatic Patients: A Proof-of-Concept Study*, 49 J. OF ASTHMA 911, 911 (2012) (concluding that medical-legal collaboration is “highly effective in improving the control of inner-city asthmatics”); Anne M. Ryan et al., *Pilot study of impact of medical-legal partnership services on patients’ perceived stress and wellbeing*, 23 J. OF HEALTH CARE FOR THE POOR AND UNDERSERVED 1536, 1536 (2012) (concluding that services to address unmet legal needs in patient-centered medical homes can potentially reduce patient stress and improve wellbeing); TISHRA BEESON, BRITTANY DAWN MCALLISTER, MARSHA REGENSTEIN, THE GEORGE WA. UNIV. SCH. OF PUB. HEALTH & HEALTH SERVS., MAKING THE CASE FOR MEDICAL-LEGAL PARTNERSHIPS: A REVIEW OF THE EVIDENCE 2 (Feb. 2013), <http://medical-legalpartnership.org/wp->



Tennessee Supreme Court’s Access to Justice Commission in February 2013, TFJA is a collaborative effort among faith-based groups that seek to connect their members with volunteer lawyers in the community.<sup>314</sup> According to the Alliance, “[t]he notion is to connect with people in need in a place they already go to seek help with a problem. That place is quite often their place of worship.”<sup>315</sup> Research on the success of Tennessee’s program will be important to determine whether this is a model that can and should be replicated in other states.

A number of other Georgia initiatives could, in coming years, expand to address the rural access-to-justice problem. For example, the state recently launched a website hosted by the American Bar Association’s Free Legal Answers program that allows pro bono attorneys to answer legal questions that may arise in any part of the state.<sup>316</sup> The Free Legal Answers program presumes access to the internet. Thus, those involved with the program are currently working to make additional computers available in libraries across the state to ensure that as many people as possible can access the service. Lawyers for Equal Justice, a legal incubator program established by the Georgia Supreme Court, the State Bar of Georgia, and the five ABA-Accredited law schools in Georgia, trains and supports recent law graduates to develop low-bono practices that can “provide quality legal services that are accessible and affordable.”<sup>317</sup> Currently based in Atlanta, the program—and its graduates—could expand to cover other parts of the state, either by taking on cases remotely or creating satellite offices. In addition, some areas—like the Appalachian Judicial Circuit in northern Georgia—have had success with programs like the circuit’s Family Law Information Center (FLIC). Created in 2008 as a resource for low-income residents seeking assistance with family law issues such as divorce, child custody, legitimation, and contempt,<sup>318</sup> FLIC provides self-represented litigants with free access to an attorney who can provide them with information and resources short of legal representation.<sup>319</sup>

#### 4. *Role of Legal Education*

In addition to the above proposals, legal education and law students can play a greater role in Georgia to close the rural justice gap. Although Georgia’s law schools are based in more urban areas, programs like those hosted by the Center for Access to Justice at Georgia State University College of Law are attempting to increase students’ exposure to the need in such communities. The Center is engaging in new research that highlights rural access to justice issues, including a project undertaken in conjunction with Georgia Legal Services Program and faculty in Georgia State’s Sociology Department. Supported by a recent grant from the American Bar Endowment, the project will study evictions and individuals’ experiences with the eviction process and dispossessionary court in semi-rural Georgia. The Center’s student-run Pro Bono Program hosts annual Alternative Spring Break trips, through which students spend a week learning about a substantive access to justice issue, like eviction defense or immigration detention, while also engaging in related pro bono service.<sup>320</sup> In 2019, the Center plans to have one of its trips focus on access to justice in more rural parts of the state. The Center is also working with others at the law

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content/uploads/2014/03/Medical-Legal-Partnership-Literature-Review-February-2013.pdf [https://perma.cc/GT7L-6FEH] (providing an overview of the need for, model and impact of medical-legal partnership).

<sup>314</sup> See *The Tennessee Faith & Justice Alliance*, JUSTICE FOR ALL, <http://justiceforalltn.com/i-can-help/faith-based-initiative> [https://perma.cc/CXP7-FZ79].

<sup>315</sup> *Id.*

<sup>316</sup> See *Free Legal Answers*, AMERICAN BAR ASS’N, <https://georgia.freelegalanswers.org/> [https://perma.cc/34XW-AG5D]. See also GEORGIALEGALAID.ORG, *supra* note 281 (providing general information on legal services, including for those who may not qualify for legal aid assistance).

<sup>317</sup> See *What Lawyers for Equal Justice Does*, LAWYERS FOR EQUAL JUSTICE, <https://lawyersforequaljustice.Legal.io/about> [https://perma.cc/5GLK-FCND].

<sup>318</sup> See *Chief Judge Brenda Weaver Receives Award for Creating the Appalachian Family Law Information Center*, GA. COURTS JOURNAL, <http://journal.georgiacourts.gov/chief-judge-brenda-weaver-receives-award-creating-appalachian-family-law-information-center> [https://perma.cc/R8YX-DVKK].

<sup>319</sup> See *Appalachian Family Law Information Center Update*, Kayann West (Jun. 1, 2009) (on file with author).

<sup>320</sup> See *Pro Bono Program*, GA. STATE UNIV., COLL. OF LAW, <http://law.gsu.edu/center-access-justice/pro-bono-program/> [https://perma.cc/KTS3-8HYE].

school to explore the creation of a rural externship program that would place students in rural communities over the summer with the hope that some of them may ultimately decide to practice there.

## 5. Conclusion

Georgia has much progress to make to ensure that individuals living in rural areas have access to resources that equip them to address their civil legal needs. As the above evidence demonstrates, there is a deep divide between metro Atlanta and the rest of the state when it comes to the ability to access justice. Renewed energy and support to increase the resources available to rural communities—including information, services, and self-help tools to address their legal needs—can narrow that gap and provide a clearer path to justice for rural Georgians.

### C. Northeastern Minnesota and Northern Wisconsin

Identified locally as “the Northland,” the area spanning northeastern Minnesota and northern Wisconsin remains a largely unconsidered site for research on access to justice and rural attorney shortages. This state study explores the region comparatively, and for two reasons. First, the socioeconomic and spatial landscapes of northeastern Minnesota and northern Wisconsin in many ways resemble one another more prominently than they do their respective states’ southern and/or metropolitan areas. With a rugged woodland topography and substantial deposits of mineral ores, the economies of northern Minnesota and Wisconsin are largely based in extractive industries, manufacturing, tourism, and, to a lesser extent, farming. Both regions have relatively well-established East African, Hmong and Latinx communities, and there are seven Anishinaabe reservations in northern Minnesota and eleven federally-recognized tribes spanning the northern half of Wisconsin.<sup>321</sup> Minnesota and Wisconsin are also two of the six mandatory states named in Public Law 280 (PL 280),<sup>322</sup> which in 1953 shifted criminal jurisdiction away from a combination of tribal and federal (Bureau of Indian Affairs) control to state and local government.<sup>323</sup> This has resulted in complex and well-documented procedural uncertainties, jurisdictional and funding gaps, and conflicts between tribal and state authorities that uniquely confront legal practitioners in the Northland.<sup>324</sup>

Secondly, northeastern Minnesota and northern Wisconsin are increasingly experiencing another commonality that largely sets the Northland apart, namely rising rates of poverty and unemployment. Between 2009 and 2014, Wisconsin’s poverty rate reached its highest in thirty years.<sup>325</sup> With the

<sup>321</sup> Two exceptions are the Ho Chunk nation, which is headquartered in Black River Falls but also has trust land in the southern half of the state, and the Forest County Potawatami, who have off-reservation trust land near Milwaukee.

<sup>322</sup> Pub. L. No. 83–280, 67 Stat. 588 (1953) (codified as amended at 18 U.S.C.A. § 1162, 25 U.S.C.A. §§ 1321 to 1325, and 28 U.S.C.A. § 1360). The only non-PL 280 tribes in Minnesota are the Red Lake Band of Chippewa (excluded from PL 280 at the outset) and the Nett Lake Band of Chippewa (the subject of retrocession in 1975), and in Wisconsin, the Menominee (excluded at the outset). See DUANE CHAMPAGNE & CAROLE GOLDBERG, CAPTURED JUSTICE: NATIVE NATIONS AND PUBLIC LAW 280, at 16 (2012).

<sup>323</sup> While in theory tribal jurisdiction remains concurrent with state jurisdiction under PL 280, the withdrawal of federal responsibility and federal support for tribal law enforcement and criminal justice has left tribal governments with fewer opportunities to create tribal courts, police departments, and safety and justice programs that reflect their own goals and values. *supra* note 322, at 38.

<sup>324</sup> These include the fact that the double jeopardy protections of the US Constitution and the Indian Civil Rights Act do not apply when those prosecutions are carried out by separate sovereigns, in this case the tribe and the state, as well as the absence of a clear federal rule of priority, supremacy, or coordination that structures relations between the coexisting state and tribal authorities. See Ross Naughton, *State Statutes Limiting the Dual Sovereignty Doctrine: Tools for Tribes to Reclaim Criminal Jurisdiction Stripped by Public Law 280?* 55 UCLA L. REV. 489, 494–95 (2007); CHAMPAGNE & GOLDBERG, *supra* note 322, at 23–24.

<sup>325</sup> Malia Jones, *Significant Changes in Wisconsin Poverty*, APPLIED POPULATION LAB (Dec. 9, 2015), [http://www.apl.wisc.edu/publications/acs\\_5years\\_dec15/acs\\_poverty\\_brief.html](http://www.apl.wisc.edu/publications/acs_5years_dec15/acs_poverty_brief.html) [https://perma.cc/3TJY-6U2J]. Other measures of Wisconsin poverty (including food insecurity) reveal marked precarity among rural northland counties in particular. Curtis, Katherine and Judi Bartfeld, *Wisconsin Poverty & Food Insecurity Profiles*. The Applied Population Lab. 2014.

exception of Milwaukee County, the state’s highest poverty rates are now concentrated in its rural northernmost counties.<sup>326</sup> While Minnesota now has the second *lowest* poverty rate in the nation,<sup>327</sup> its lowest median incomes have also come to be concentrated in the North—a marked change since 1999, when the poorest counties were scattered throughout the state.<sup>328</sup> As in Wisconsin, unemployment across rural northern Minnesota has steadily increased, with particularly high rates in the northeastern Iron Range where in 2016 there were nearly 7,000 mining-related lay-offs.<sup>329</sup> Across this context, the number of rural individuals who need and are income eligible for civil legal assistance (typically 125-200% of federal poverty guidelines) continues to grow.

While the northern portions of each state share similar geographies, demographics, and growing rates of poverty and unemployment, the types of political and funding supports for low-income rural residents and rural attorneys are markedly different. This section explores these institutional and political contexts first. It next discusses the legal needs and resource shortfalls that largely span but are differently addressed across the Northland region. Finally, it explores policy efforts to confront justice challenges across the Northland, both those administered at a formal state level, and those that are nascent and relatively informal.

### 1. *Institutional Framework and Political Landscape*

Despite the common characteristics of the Northland, there exists a growing political divide, one with particular salience to any effort aimed at contextualizing rural access to justice. In 2010, Wisconsin elected Republican governor Scott Walker and Republicans to majorities in the Legislature, whereas in Minnesota’s 2012 election, Democrats controlled the Legislature and every state constitutional office. In the years since, Minnesota’s efforts to legalize gay marriage, create the state’s Obamacare health insurance exchange, and raise taxes by \$2.1 billion have been contrasted with Wisconsin’s end to collective bargaining rights for most public employees, rejection of a Medicaid expansion, cuts to public K-12 funding, and passage of restrictive anti-abortion and voter ID legislation.<sup>330</sup> Of particular significance to this article, in 2011 Governor Walker eliminated Wisconsin state funding for civil legal aid. Minnesota, on the other hand, has steadily increased its legislative appropriation for civil legal services, reaching \$13.1 million in FY 2017.<sup>331</sup>

#### a. *Northern Wisconsin*

Because they receive no state tax dollars, Wisconsin’s two non-profit civil legal aid providers now rely largely on federal Legal Services Corporation (LSC) funding. Legal Action of Wisconsin, headquartered in Milwaukee, is projected to receive approximately \$4.1 million in LSC funds in 2018.<sup>332</sup> Wisconsin Judicare, Inc. (hereafter Judicare), located in north-central Wisconsin, will receive roughly \$1

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<https://apl.wisc.edu/resources>. See also Table 4: 2016 Poverty Rate.

<sup>326</sup> See *Wisconsin County Unemployment Rates*, DEP’T. OF WORKFORCE DEV. (Feb. 2018),

[http://worknet.wisconsin.gov/worknet\\_info/maps/pdf/uRatesCo.pdf](http://worknet.wisconsin.gov/worknet_info/maps/pdf/uRatesCo.pdf) [<https://perma.cc/FJ8M-TBCP>].

<sup>327</sup> See Jon Collins, *Minnesota has Second Lowest Poverty Rate in U.S.*, MINN. PUB. RADIO NEWS, (Sept. 13, 2016),

<https://www.mprnews.org/story/2016/09/13/minnesota-census-data-low-poverty-uninsured-rates> [<https://perma.cc/VW8Z-JE5T>].

<sup>328</sup> See TOM LEGG & NGOC (JENNY) NGUYEN, GROWTH & JUSTICE, *WIDENING INEQUALITY IN MINNESOTA: A COUNTY-BY-COUNTY ANALYSIS* (May 2015), <http://growthandjustice.org/publication/WideningInequalityMN.pdf> [<https://perma.cc/KW7H-U66R>]. See also Table 4 (2016 Poverty Rate).

<sup>329</sup> See Bill Hanna, *Iron Range Unemployment Numbers Keep Growing*, HIBBING DAILY TRIBUNE (Mar. 6, 2016),

[http://www.hibbingmn.com/news/local/iron-range-unemployment-numbers-keep-growing/article\\_454270ea-e32a-11e5-b783-bbbed7e5744e.html](http://www.hibbingmn.com/news/local/iron-range-unemployment-numbers-keep-growing/article_454270ea-e32a-11e5-b783-bbbed7e5744e.html) [<https://perma.cc/JZ4P-CAY3>].

<sup>330</sup> See Lawrence Jacobs, *Right vs. Left in the Midwest*, N.Y. TIMES (Nov. 23, 2013),

<http://www.nytimes.com/2013/11/24/opinion/sunday/right-vs-left-in-the-midwest.html> [<https://perma.cc/J2ZU-JYK8>].

<sup>331</sup> See LEGAL SERVS. ADVISORY COMM., MINN. SUPREME COURT, FY2017 ANNUAL REPORT, 4 (Jan. 2018),

[http://www.mncourts.gov/mncourtsgov/media/scao\\_library/documents/Annual-report-FY17.pdf](http://www.mncourts.gov/mncourtsgov/media/scao_library/documents/Annual-report-FY17.pdf) [<https://perma.cc/7DMC-45RC>].

<sup>332</sup> *LSC 2018 Grant Award*, *supra* note 243.

million.<sup>333</sup> This breakdown, namely that Legal Action receives roughly 80% of the state’s LSC funding, is typical for the state: LSC funds are distributed on a per-capita basis according to each service area’s share of the eligible poverty population.<sup>334</sup> For *rural* organizations that rely so heavily on LSC funding, this distribution formula proves consequential and arguably problematic.

Legal Action has six offices across the southern half of Wisconsin. Each is located in a metropolitan area and serves two to ten neighboring counties.<sup>335</sup> Judicare, on the other hand, has just one main office and is the sole civil legal aid provider for Wisconsin’s northern 33 counties and 11 federally recognized tribes. Judicare’s share of the state’s eligible poverty population—and of the state’s population more generally—is considerably smaller than that covered by Legal Action of Wisconsin, but the vast and jurisdictionally complex geography it serves presents unique organizational costs that federal funding formulas do not necessarily anticipate. This is discussed in more detail below. Likewise, when it comes to supporting and referring the many potential clients it cannot take on due to funding constraints, Judicare has markedly fewer resources than its more metropolitan Legal Action counterparts, such as large local firms that may take on cases pro bono, or robust social service networks that can support individuals with complex legal and extra-legal needs.<sup>336</sup>

Moreover, because of the state’s restricted funding context, both Legal Action and Judicare rely largely on federal and private grants that in many ways dictate the priorities of these organizations. In 2017, for instance, 7.6% of Judicare’s funding came from Violence Against Women Act (VAWA) grants and 10.4% from federal Victims of Crime Act (VOCA) grants.<sup>337</sup> While data identify access to healthcare, consumer, disability, family law and housing issues as the legal needs local Northland members themselves most urgently prioritize,<sup>338</sup> in the absence of state tax dollars Judicare must focus its organizational agenda on the types of grant funding for which it is eligible.

#### *b. Northeastern Minnesota*

Though Minnesota’s political model has been largely viewed as more effective in increasing jobs and improving business opportunities and living conditions,<sup>339</sup> much of this success is attributed to the vitality of the Minneapolis-St. Paul metro area. Considerably less attention has been devoted to how the state’s rural areas have fared, particularly those in the north.

The current institutional and political landscape of Minnesota suggest its northeastern region has fared relatively well. Whereas Wisconsin legal aid receives no state tax dollars, Minnesota has steadily increased its legislative appropriation for civil legal services, reaching \$13.1 million in FY 2017.<sup>340</sup> Presently, northeastern Minnesota is served by (i) the Volunteer Attorney Program (VAP), which recruits private attorneys to provide pro bono services to individuals across northern Minnesota who fall under 200% of federal poverty guidelines; (ii) Anishinaabe Legal Services, which serves the Leech Lake, Red Lake, and White Earth reservations; and (iii) Legal Aid Service of Northeastern Minnesota (LASNEM), a non-profit law firm serving the eleven counties in northeastern Minnesota. Like Judicare, LASNEM’s service area is geographically expansive. Significantly, however, LASNEM has three main offices and

<sup>333</sup> *Id.*

<sup>334</sup> *LSC By the Numbers 2015*, LEGAL SERVS. CORP. (Sept. 2016), <https://www.lsc.gov/media-center/publications/lsc-numbers-2015> [<https://perma.cc/9M8S-2TF7>].

<sup>335</sup> *About Us*, LEGAL ACTION OF WIS., <http://www.legalaction.org/about-us> [<https://perma.cc/6CZQ-R6BU>].

<sup>336</sup> See SCOTT W. ALLARD, *OUT OF REACH: PLACE, POVERTY, AND THE NEW AMERICAN WELFARE STATE* (2008).

<sup>337</sup> Data on file with the Harvard Law Library.

<sup>338</sup> See Jordan Wolf and Michele Statz, *Wisconsin Judicare, Inc. Community Needs Assessment*, May, 2018.

<sup>339</sup> See Paul Tosto, *Minnesota economy beats Wisconsin: 7 charts, 1 table*, MINN. PUB. RADIO NEWS (Jan. 26, 2015), <http://blogs.mprnews.org/newscut/2015/01/minnesota-economy-beats-wisconsin-7-charts-1-table/> [<https://perma.cc/8C69-2XV6>].

<sup>340</sup> See LEGAL SERVS. ADVISORY COMM., *supra* note 331, at 5.

two satellite offices spread across the region.<sup>341</sup> The attorneys who staff these offices typically practice regularly in two or three district and tribal courts, allowing for consistency and rapport between legal aid advocates and court personnel. This is a marked contrast from northern Wisconsin’s complex jurisdictional and practice contexts, discussed below.

In addition to civil legal aid provision, a number of state initiatives are available to assist pro se clients, including LawHelpMN.org, a centralized website offering legal forms and online legal advice.<sup>342</sup> The Minnesota Judicial Branch’s website also includes relevant forms and information, and there are county law libraries<sup>343</sup> and Self Help Center workstations in every county courthouse across the state.<sup>344</sup> Each workstation has a computer, phone, and printer, ostensibly enabling pro se clients to find legal information, print court forms, find assistance in completing court forms, and speak with Self Help staff over the phone. As one local attorney remarked, however, “access” does not necessarily safeguard “justice”: “You can simplify the formulaic process, but you don’t simplify the law.” An area judge added, “The issue isn’t getting people to the courts. The issue is getting people lawyers.”<sup>345</sup>

## 2. *Community Legal Needs and Resource Shortfalls*

Across a region defined by its geographic and socioeconomic similarities, and increasingly by its political differences, the aforementioned funding context powerfully influences attorneys’ efficacy and litigants’ access to justice. So also do the spatial expansiveness of district courts and practice areas; inconsistencies in organizational structures and processes; and the availability of rapport, trust, and individual attention.

### a. *Northern Wisconsin*

In addition to limited funding, northern Wisconsin faces well-documented rural lawyer shortages which are accelerated by the area’s greying bar. Over 60 percent of the state’s attorneys practice law in major urban areas,<sup>346</sup> leaving some counties in rural Wisconsin with attorney-to-resident ratios as high as 1:4,452.<sup>347</sup> Across the northern half of the state, only 6 of the 40 attorneys in Vilas County are under the age of 50,<sup>348</sup> and Florence and Pepin counties have no lawyers under 50.<sup>349</sup> Oconto County has two, and no new attorneys have moved into the county in the last decade.<sup>350</sup> Nine counties in northern Wisconsin have ten or fewer active attorneys.<sup>351</sup>

These shortages have immediate impacts on northern Wisconsin’s civil legal aid attorneys, discussed below. They also have urgent consequences for northern Wisconsin more broadly, where rising rates of

<sup>341</sup> *Our Team*, LEGAL AID SERVS. OF NORTHEASTERN MINN., <http://lasnem.org/about-us/our-team/> [https://perma.cc/C2NQ-9DKC].

<sup>342</sup> *See generally* LAWHELPMN.ORG, <https://www.lawhelpmn.org/> [NEED PERMALINK].

<sup>343</sup> *See County Law Libraries*, MINN. STATE LAW LIBRARY, <https://mn.gov/law-library/research-links/county-law-libraries.jsp> [https://perma.cc/GQH6-28TV].

<sup>344</sup> *See Self Help Centers*, MINN. JUDICIAL BRANCH, <http://www.mncourts.gov/Help-Topics/Self-Help-Centers.aspx> [https://perma.cc/FXV3-DNK8].

<sup>345</sup> Interview excerpt on file with Harvard Law Library.

<sup>346</sup> Danielle Kaeding, *Rural Wisconsin Lacking Lawyers, Especially Up North*, WIS. PUB. RADIO (Aug. 23, 2016, 5:40 PM), <https://www.wpr.org/rural-wisconsin-lacking-lawyers-especially-north> [https://perma.cc/6MN8-3KTD].

<sup>347</sup> Diane Molvig, *The Road to Rural Practice*, STATE BAR OF WIS., WIS. LAWYER (Oct. 1, 2014), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=87&Issue=9&ArticleID=23593> [https://perma.cc/S3V4-J8UP].

<sup>348</sup> George Brown, *Go Rural, New Lawyer*, STATE BAR OF WIS., WIS. LAWYER (Jul. 28, 2016), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=89&Issue=7&ArticleID=24972> [https://perma.cc/4CFU-FWB9].

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*

<sup>351</sup> Kaeding, *supra* note 346.

opioid and meth addiction are resulting in an ever-increasing number of criminal cases.<sup>352</sup> The shortage of local lawyers to take up these public defender cases is compounded by the fact that the state currently pays the lowest rate in the country for court-appointed attorneys.<sup>353</sup> A proposed bipartisan bill<sup>354</sup> aims to raise these payments, but for now, the absence of local lawyers, and of private attorneys across Wisconsin who are unwilling to accept a low hourly rate and an even lower travel rate for up to five hours of driving time one-way, has resulted in a backlog of cases.<sup>355</sup> It can take up to eight weeks to assign a public defender after being arrested—a gap that leaves people who are addicted to opioids or meth in a high-stress situation, lengthening delays for treatment and often resulting in re-offense.<sup>356</sup>

Wisconsin’s rural shortages also impact the efficacy and reach of civil legal aid provision. As a judicare program,<sup>357</sup> Wisconsin Judicare, Inc. has historically relied on the participation of the private, decentralized bar. Yet because of attorney retirements—and correspondingly heavier workloads for the attorneys who remain in these regions—fewer private attorneys are now willing or able to take on “low bono” Judicare cases. They are even less likely to accept the pro bono cases that Wisconsin Judicare, Inc. increasingly refers owing to its constrained funding sources and diminished ability to provide funds to partnering attorneys. In response, Judicare has hired more staff attorneys. This transition has helped address certain concerns, but it has also illuminated a host of other professional challenges in mitigating rural civil legal need.

For one, there is high turnover at Judicare due to relatively low salaries and limited local job opportunities for spouses or partners, and many of Judicare’s new staff attorneys are recent law school graduates. The resulting lack of experience and continuity in Judicare staffing has resulted in diminished familiarity and trust between Judicare attorneys, who are based in Wausau, and clients across counties and reservations stretching as far as 200 miles away. Secondly, because Wisconsin’s northern county courts are relatively geographically isolated, some, though certainly not all, ascribe to internal norms and filing processes that may be familiar to local attorneys but are often unclear and frustratingly inconsistent to legal aid advocates who must work across so many court systems. Unaware of local practices, less experienced attorneys struggle to establish rapport with circuit court commissioners<sup>358</sup> and judges, and some advocates describe certain northern county courts or court personnel as openly hostile to attorneys perceived as “outsiders” due to their age, professional experience, regional background, and, for women in particular, gender.<sup>359</sup> At its worst, this undermines advocacy efforts on behalf of low-income

<sup>352</sup> See Thomas John Walsh, *In the Crosshairs: Heroin's Impact on Wisconsin's Criminal Justice System*, 89 WIS. LAW. (St. B. Wis.), (Jul. 28, 2016),

<https://www.wisbar.org/newspublications/wisconsinlawyer/Pages/article.aspx?Volume=89&Issue=1&ArticleID=24551>.

<sup>353</sup> See Peter Coutu, *Where the lawyers aren't: Attorney shortage in rural Wisconsin compounds opioid crisis*, ISTHMUS (Jan. 18, 2018), <http://isthmus.com/news/cover-story/attorney-shortage-in-rural-wisconsin-compounds-opioid-crisis/> [<https://perma.cc/T58Q-5DTK>].

<sup>354</sup> Wis. Legis. AB 828 Reg. Sess. 2017-2018 (2017). See also Bruce Vielmetti, *To get lawyers to represent poor, rural clients lawmakers want state to cover their student loans*, MILWAUKEE JOURNAL SENTINEL (Nov. 14, 2017, 12:09 PM), <http://www.jsonline.com/story/news/2017/11/14/get-lawyers-represent-poor-rural-clients-lawmakers-want-state-cover-their-student-loans/858514001/> [<https://perma.cc/97XR-WMPW>].

<sup>355</sup> See Coutu, *supra* note 353.

<sup>356</sup> *Id.*

<sup>357</sup> Designed to ensure that low-income clients have freedom to choose their counsel and that the client is defended as vigorously as a private fee-paying client, the Judicare model directs federal or state funds to private attorneys who provide free legal services to low-income clients. See generally Michael A. Millemann, *Diversifying the Delivery of Legal Services to the Poor by Adding a Reduced Fee Private Attorney Component to the Predominantly Staff Model, Including Through a Judicare Program*, 7 U. MD. L.J. RACE, RELIGION, GENDER, AND CLASS 227 (2007).

<sup>358</sup> See, e.g., redacted interview on file with the Harvard Law Library. Wis. Stat. § 757.69. Powers and duties of circuit court commissioners. <https://docs.legis.wisconsin.gov/statutes/statutes/757/69>

<sup>359</sup> See, e.g., redacted interview on file with the Harvard Law Library. Similar sentiments and experiences are evidenced in Trish Mundy’s work studying the Australian experience, *Women in ‘Rural’ Practice: Opportunities, Challenges and Strategies to Thrive*, in *THE PLACE OF PRACTICE: LAWYERING IN RURAL AND REGIONAL AUSTRALIA* 64–80 (Trish Mundy et al. eds., 2017). Note that the self-identified male-to-female ratio of Wisconsin state bar members is almost consistently 2:1 across the state. See *Membership Statistics*, ST. B. WIS. (2018), <https://www.wisbar.org/aboutus/overview/Pages/Member-Statistics.aspx> [<https://perma.cc/F7D6-7FCH>].

individuals and compounds the demands already faced by rural legal aid. Of course, noted one female attorney, at its best, “[the judge and opposing counsel] underestimate me, and I get a good result.”<sup>360</sup>

However indirectly, the experiences of Judicare’s new staff attorneys underscore how uniquely well-suited the Judicare model was, and could potentially still be, in addressing the legal needs and complex court structures of northern Wisconsin. As evidenced in the success of Judicare’s work through a decentralized private bar<sup>361</sup>—i.e., attorneys who are familiar with and to local court systems—and the well-established presence of Judicare’s Indian Law Office in the state’s tribal communities,<sup>362</sup> any initiative to recruit *and retain* rural attorneys in northern Wisconsin must acknowledge the significance of trust, rapport, transparent court procedures, and being locally “known.” How this is established, let alone sustained, amidst limited funding, overburdened attorneys, distinctive court systems, and a geographically expansive region remains a significant question.

### b. *Northeastern Minnesota*

Like Wisconsin, Minnesota faces its own rural attorney shortages—and, notably, a shortage of judges.<sup>363</sup> Rural Minnesota also contends with a greying bar,<sup>364</sup> with northeastern Minnesota in particular projected to experience population decline and an unprecedented increase in the age 65 and older population group.<sup>365</sup> At the same time, the likelihood of those who are income eligible for legal services actually receiving legal assistance—as well as those who are ineligible as being nominally above the federal poverty guidelines, often referred to as “working poor,”<sup>366</sup>—is considerably higher in Minnesota.<sup>367</sup> This is particularly significant in light of the precarious workforce of northeastern Minnesota’s largely mining-based economy,<sup>368</sup> one in which families transition in and out of poverty following the “boom and bust” of mines and indirectly-related employment, such as welding, daycare provision, and food service.<sup>369</sup> Minnesota’s ability to offer some outreach to those who are and who are not financially eligible for pro bono legal services—yet who still cannot afford a private attorney—owes to available funding, of course, and to collaborative commitments by local and state bar associations. One

<sup>360</sup> Redacted interview on file with Harvard Law Library.

<sup>361</sup> See *History of Wisconsin Judicare*, WIS. JUDICARE INC., <http://www.judicare.org/Content/History.cfm> [<https://perma.cc/9YX2-2TDY>].

<sup>362</sup> See *Indian Law Office*, WIS. JUDICARE INC., [http://www.judicare.org/Content/Indian\\_Law.cfm](http://www.judicare.org/Content/Indian_Law.cfm) [<https://perma.cc/8RTR-3JKS>].

<sup>363</sup> Perhaps unsurprisingly, recruiting judges and judicial staff to “Greater Minnesota” (commonly contrasted with “Metropolitan Minnesota”) is a challenge owing to stagnant pay and the high and diverse demands that a judge who handles nearly every case in her or his district faces. See Briana Bierschbach, *With a shortage of judges looming, judicial branch looks to bump salaries in Minnesota*, MINNPOST (Feb. 14, 2017), <https://www.minnpost.com/politics-policy/2017/02/shortage-judges-looming-judicial-branch-looks-bump-salaries-minnesota> [<https://perma.cc/K9SB-4KKJ>].

<sup>364</sup> Elizabeth Ahlin, *Small towns pull out stops to lure legal talent*, MINNESOTA LAWYER (November 21, 2013), <https://minnlawyer.com/2013/11/21/wishek-n-d-wants-you/>. Save informal survey data collected by the Minnesota State Bar Association (MSBA) on retiring attorneys in “outstate” Minnesota, there are presently no conclusive data on Minnesota county by county bar membership, age, or recruitment efforts.

<sup>365</sup> CTR. FOR RURAL POVERTY & DEV., STATE OF RURAL MINNESOTA REPORT 2014 at 8, <https://www.ruralmn.org/wp-content/uploads/2014/07/State-of-MN-2014-MBA.pdf> [<https://perma.cc/Y88H-C899>]. See also Aaron Brown, *The Future of Northern Minnesota, A Tale of Demographic Change*, STAR TRIBUNE (October 29, 2014), <http://www.startribune.com/the-future-of-northern-minnesota-a-tale-of-demographic-change/280768742/>.

<sup>366</sup> *Statewide Low Fee Family Project*, MINN. ST. B. ASS’N, <https://www.mnbar.org/docs/default-source/atj/low-fee-family-law-project-revised-ad.pdf?sfvrsn=0> [<https://perma.cc/8SDF-ZYFC>].

<sup>367</sup> Hannah Lieberman Consulting, *Overcoming Barriers that Prevent Low-Income Person from Resolving Civil Legal Problems: A Study Prepared for the Legal Assistance to the Disadvantaged Committee of the Minnesota State Bar Association*, MINN. ST. B. ASS’N. (Sept. 2011), [http://www.mncourts.gov/Documents/0/Public/administration/Final\\_MN-CABS\\_Study\\_September\\_2011.pdf](http://www.mncourts.gov/Documents/0/Public/administration/Final_MN-CABS_Study_September_2011.pdf)

<sup>368</sup> *Economic Composition of Northeast Minnesota: Industries and Performance*. University of Minnesota Extension, November, 2014. <https://www.extension.umn.edu/community/economic-impact-analysis/reports/docs/2014-Northeast-MN.pdf>

<sup>369</sup> Kai Schafft, et. al. 2015. *Busted amidst the Boom: The Creation of New Insecurities and Inequalities within Pennsylvania's Shale Gas Boomtowns*. RURAL SOCIOLOGY. <https://onlinelibrary.wiley.com/doi/full/10.1111/ruso.12196>. See also Ann Huff Stevens, *Climbing Out of Poverty, Falling Back in: Measuring the Persistence of Poverty over Multiple Spells* (Nat’l Bureau of Econ. Research, Working Paper No. 5390, 1995).

instance of this is the Statewide Low Fee Family Law Project, which provides reduced fee family law services to potential clients who are currently employed or on Social Security and have an income between 125-250% of the federal guidelines.<sup>370</sup> While evidencing meaningful and arguably rare attention to the limitations of most funding guidelines, currently the Low Fee Family Law Project only serves “the Metro,” which consists of the counties of and surrounding the Twin Cities—Hennepin, Ramsey, Dakota and Anoka Counties.<sup>371</sup>

Other discrepancies between “the Metro” and northeastern Minnesota courts uniquely impact the efficiency and efficacy of legal aid attorneys. For instance, most Minnesota counties offer Early Neutral Evaluation (ENE), which is the involvement of a judicial officer in order to aid in a case’s earlier resolution.<sup>372</sup> A voluntary process, ENE is designed to facilitate dispute resolution in custody and visitation matters (Social ENE) and financial matters (Financial ENE).<sup>373</sup> Although Hennepin and Ramsey Counties, where Minneapolis and Saint Paul are located, have Family Court Services divisions with paid staff to conduct ENEs, the remainder of the state’s counties refer out to the private sector.<sup>374</sup> Accordingly, many rural county courts offer only limited ENE hours. Others have stopped providing ENE altogether because they view it as ineffective or too costly for involved parties.<sup>375</sup> For legal aid attorneys, the consequences of such regional variances are significant: “Your strategy is totally different if that procedural component isn’t built in,” noted one attorney. “It affects your *ability* to practice and your *style* of practice if you’re working in different county courts.”<sup>376</sup> As in Wisconsin, these procedural inconsistencies uniquely impact the work of rural civil legal aid attorneys who must practice across long distances, some as far as 150 miles one way, and across diverse courts.

### 3. Policy Efforts to Confront Justice Challenges Across the Northland

For now, local and state efforts to mitigate justice gaps in northern Minnesota and Wisconsin are relatively promising. These efforts occur both because of and sometimes in spite of area law schools. Of the five law schools located in Minnesota and Wisconsin, none offers any formal curricular offerings or incentivized programs for students interested in rural practice—and *all* face declines in enrollment.<sup>377</sup> Mitchell Hamline does, however, offer a hybrid on-campus/online JD option that permits students to live

<sup>370</sup> See *Statewide Low Fee Family Law Project*, *supra* note 366.

<sup>371</sup> See *Hennepin County Bar Association Low Fee Family Law Project*, MINNESOTA HELP, [https://www.minnesotahelp.info/Providers/Hennepin\\_County\\_Bar\\_Association/Low\\_Fee\\_Family\\_Law\\_Project/1?returnUrl=%2FSPSpecialTopics%2FYouth%2F24741%3F](https://www.minnesotahelp.info/Providers/Hennepin_County_Bar_Association/Low_Fee_Family_Law_Project/1?returnUrl=%2FSPSpecialTopics%2FYouth%2F24741%3F) [https://perma.cc/7GRG-RAG2] (“Clients must meet financial eligibility guidelines and have a Family Law matter in Hennepin, Ramsey, Dakota or Anoka County.”).

<sup>372</sup> *Early Case Management / Early Neutral Evaluation*, MINN. JUDICIAL BRANCH, <http://www.mncourts.gov/Help-Topics/ENE-ECM.aspx> [https://perma.cc/LM36-E42G].

<sup>373</sup> *Id.*

<sup>374</sup> In Hennepin and Ramsey Counties, individuals pay Family Court Services for ENE services on sliding fee scale. *Family Court Services*, HENNEPIN CTY. MINN., <https://www.hennepin.us/residents/public-safety/family-court-services> [https://perma.cc/5CPZ-S4CM]. *ECM/ENE Initiative (Early Case Management/Early Neutral Evaluation Pilot) Final Report to the State Justice Institute*, MINNESOTA JUDICIAL BRANCH, October 15, 2010, [http://www.mncourts.gov/mncourtsgov/media/scao\\_library/CJI/ECM\\_ENE\\_Initiative\\_Final\\_Report\\_October\\_18\\_2010.pdf](http://www.mncourts.gov/mncourtsgov/media/scao_library/CJI/ECM_ENE_Initiative_Final_Report_October_18_2010.pdf)

<sup>375</sup> *Counties Using Initial Case Management Conferences (ICMC) and Social and/or Financial Early Neutral Evaluation (ENE)*, MINN. JUDICIAL BRANCH, (June 2016), [http://www.mncourts.gov/mncourtsgov/media/tenth\\_district/ENE%20documents/ICMC-ENE\\_StateMap\\_2016June-rotated.pdf](http://www.mncourts.gov/mncourtsgov/media/tenth_district/ENE%20documents/ICMC-ENE_StateMap_2016June-rotated.pdf) [https://perma.cc/2AM7-4ES8]. One area judge described ENE as rife with unstated pressures and “deal-making” that are particularly conspicuous in rural courts. “These are the subtle biases of [the ENE] system, the unstated but unethical premise that a local lawyer can make to the client: ‘Hey, I’m part of the system, and if you’re not going to agree to make a deal here in mediation, then my credibility is at stake.’ . . . And all the lawyers are trained in mediation. With ENE, you’ve got to bring in another one. So the lawyers here make deals, ‘I’ll pick you on this case; you pick me for yours.’” (Redacted interview excerpt on file with Harvard Law Library).

<sup>376</sup> (Redacted interview excerpt on file with Harvard Law Library).

<sup>377</sup> See Burl Gilyard, *The legal market is changing. Can Minnesota’s law schools adapt?* MINNPOST (June 20, 2016), <https://www.minnpost.com/twin-cities-business/2016/06/legal-market-changing-can-minnesota-s-law-schools-adapt> [https://perma.cc/5LQ7-3D68]. Wisconsin’s two law schools are the University of Wisconsin Law School (Madison) and Marquette University Law School (Milwaukee). In Minnesota, the law schools are the Mitchell Hamline School of Law (St. Paul), the University of St. Thomas School of Law (Minneapolis), and the University of Minnesota Law School (Minneapolis).



in their home communities while completing at least some of their law school work.<sup>378</sup> This program may be uniquely beneficial to rural-based students who are at a significant distance from Mitchell Hamline and wish to maintain connections to their rural communities while in law school.

At the same time, a number of these law schools collaborate on initiatives that expose students to rural legal practice and serve low-income rural community members. In Wisconsin, the state bar association recently developed the Greater Wisconsin Initiative Bus Tour in conjunction with a number of county bar associations and the Marquette University and University of Wisconsin law schools.<sup>379</sup> The bus tour introduces law students and recent law school graduates to the nature of rural practice and small-town living and has helped Judicare in its recruitment efforts.<sup>380</sup> Local members of the private bar are likewise enthusiastic about the potential of this initiative, though they highlight more complex regional deterrents to the recruitment and retention of attorneys, particularly those with families.<sup>381</sup> Most prominent among these is the rapidly diminishing quality of local education, particularly as rural Wisconsin school districts contend with disproportionately high rates of inexperienced teachers in the wake of Act 10<sup>382</sup> and with state funding tied to student enrollment amidst general population declines.<sup>383</sup>

Other efforts to increase access to justice in rural Wisconsin include a bill recently proposed by the state legislature to provide student loan payments on behalf of lawyers who represent rural low-income criminal defendants<sup>384</sup> and Judicare's own Northern Wisconsin Legal Advice Project (NWLAP), an online legal advice program implemented in 2015 and staffed by a Judicare attorney, a paralegal, and volunteer attorneys. Through NWLAP, eligible clients, i.e., those who lived and had legal problems venued in one of Wisconsin's northern 33 counties and were defined as low-income based on federal poverty guidelines, could submit a legal question online and receive a customized response from a participating attorney. The program was later adopted by the state's Access to Justice Commission<sup>385</sup> and is now part of the American Bar Association's Free Legal Answers project.<sup>386</sup> Some county bar associations also offer regular in-person clinics staffed by local volunteer attorneys to help pro se litigants.<sup>387</sup>

Additionally, a volunteer attorney with Judicare recently (2017) established a mediation services

<sup>378</sup> Mitchell Hamline HYBRID JD Program, <https://mitchellhamline.edu/academics/juris-doctor-program/hybrid-j-d-program/> (last visited June 27, 2018).

<sup>379</sup> *Greater Wisconsin Initiative*, STATE BAR OF WIS., <http://www.wisbar.org/aboutus/leadership/Pages/Greater-Wisconsin-Initiative.aspx> [<https://perma.cc/M74T-LZLN>]. This is modeled after the Nebraska program. *See Rural Practice Initiative*, NEB. STATE BAR ASS'N, <http://www.nebar.com/page/RPI> [<https://perma.cc/Z6QY-488X>].

<sup>380</sup> Shannon Green, *Up North: Young Lawyers Find Their Way to Wausau*, STATE BAR OF WIS.: INSIDE TRACK (Oct. 4, 2017), <http://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=9&Issue=19&ArticleID=25887> [<https://perma.cc/T2NJ-ADM4>].

<sup>381</sup> *See e.g.*, redacted interview excerpt on file with the Harvard Law Library.

<sup>382</sup> Wisconsin's 2011 Act 10 effectively eliminated collective bargaining rights for public school teachers, mandated steep cuts in district pension and health care contributions, and prohibited forced payment of union dues for members. This posed particular challenges to rural districts, which have since struggled to pay more to retain teachers. Indeed, one out of four rural teachers had taught for fewer than five years in 2015-16. Madland, David and Alex Rowell. *Attacks on Public-Sector Unions Harm States: How Act 10 Has Affected Education in Wisconsin*. Center for American Progress Fund. 11/15/2017. <https://cdn.americanprogress.org/content/uploads/sites/2/2017/11/15074954/ImpactofWisconsinAct10-brief.pdf>. *See also* DePillis, Lydia. *Here's what happened to teachers after Wisconsin gutted its unions*. CNN Money, November 17, 2017. <http://money.cnn.com/2017/11/17/news/economy/wisconsin-act-10-teachers/index.html>. *See also* Table 6: 2012–2016 Education.

<sup>383</sup> Gordon, Scott. *Declining Enrollment Intensifies Funding 'Carousel' For Rural Schools: Hurley District Welcomes Budget Boosts But Still Faces Long-Term Uncertainty*. WisContext, April 3, 2017. <https://www.wiscontext.org/declining-enrollment-intensifies-funding-carousel-rural-schools>.

<sup>384</sup> Vielmetti, *supra* note 354.

<sup>385</sup> *Wisconsin Access to Justice Commission*, WISATJ, <http://wisatj.org/> (last visited May 5, 2018). Wisconsin's Access to Justice Commission was created by the state's Supreme Court at the request of the State Bar of Wisconsin and has consistently expressed an interest in rural Wisconsin. At least four of the Commission's 17 current members live and/or practice in northern Wisconsin counties and tribal communities. In 2017, the Commission invited the author to present her initial findings at their December meeting.

<sup>386</sup> *See Wisconsin Free Legal Answers*, WISCONSIN ACCESS TO JUSTICE COMMISSION, <http://wisatj.org/projects/wisconsin-legal-advice-online> (last visited May 5, 2018); *See also* Georgia, *Free Legal Answers*, *supra* note 316.

<sup>387</sup> *See, e.g., Wisconsin Family Justice Clinic Homepage*, WFJC, <http://www.ernestromero.net/WFJC.htm> (last visited May 5, 2018).

project in Marathon County, where the Judicare office is located, with the goal of expanding into each of the northern 33 counties Judicare serves.<sup>388</sup> While a nascent effort, the program has so far been well-received by community members and members of the local bar, both for the assistance it provides to those whose who do not qualify for legal aid, as well as for the assistance it offers strained county courts—especially those inundated with criminal cases owing to the Northland’s aforementioned opioid and meth epidemics.<sup>389</sup>

At the same time, and in a sense reflecting the patchwork quality of Wisconsin’s justice system more generally, it is worth underscoring that many of the initiatives occur on a county-by-county basis. Only a handful of counties participate in the Greater Wisconsin Initiative Bus Tour, and only some counties offer direct assistance to pro se litigants. Additionally, some of the most potentially successful programs, such as the mediation services project, have depended exclusively on a *champion*—one individual with the time and social capital to implement new initiatives. The extent to which these projects are sustainable or replicable remains to be seen.

Given Minnesota’s relatively robust funding context, it is able to offer comparatively more formal programs to assist low-income rural clients and contend with attorney shortages. For instance, in reviewing civil legal aid service and funding levels by county, Minnesota Legal Services Advisory Committee (LSAC) found resource disparities in rural private attorney involvement (pro bono and judicare).<sup>390</sup> Unlike Wisconsin’s, LSAC’s response was—and could be—remarkably nimble, with a change to regional funding structures and additional grants offered to the regions of the state with rural attorney shortages.<sup>391</sup> Other initiatives include the Minnesota Justice Foundation’s Pro Se Clinics, which are staffed by law students and attorneys and are hosted by area organizations, including Anishinaabe Legal Services in northeastern Minnesota.<sup>392</sup> These clinics, along with the state’s other self-help initiatives, discussed above, are critically important: Among those states reporting civil cases involving self-help litigants, Minnesota had the highest rate in the nation in 2015.<sup>393</sup> In 2016, 81.6% of civil cases in Minnesota involved self-help litigants.<sup>394</sup>

#### 4. Conclusion

This study offers a relatively cursory overview of two complex state contexts. As such, many of the nuanced differences in rural legal needs across counties and reservations, as well as efforts to address these needs, are only summarily discussed. At the same time, however, this comparative perspective offers a unique window on how one region, the Northland, is variously impacted by state political structures and funding mechanisms, attorney and judge shortages, the greying bar, and area law schools. It also demonstrates the intricate challenges that rural attorneys daily navigate in the Northland, including diverse jurisdictional contexts, expansive practice areas, and, as ethnographic data evidence, more subtle but no less consequential procedural inconsistencies and conflicting interpretations of “access to justice.”

<sup>388</sup> See *Wisconsin Judicare launches new mediation program in Marathon County*, WASAU PILOT AND REVIEW (Aug. 22, 2017), <https://wausaupilotandreview.com/2017/08/22/wisconsin-judicare-launches-new-mediation-program-in-marathon-county/>. See also redacted interview excerpt on file with Harvard Law Library.

<sup>389</sup> Redacted interview excerpt on file with Harvard Law Library.

<sup>390</sup> LEGAL SERVS. ADVISORY COMM., MINN. SUPREME COURT, FY16 ANNUAL REPORT 1 (Nov. 10, 2016), [http://www.mncourts.gov/mncourtsgov/media/scao\\_library/documents/Annual-report-FY16.pdf](http://www.mncourts.gov/mncourtsgov/media/scao_library/documents/Annual-report-FY16.pdf) [https://perma.cc/AYW5-ZR7L].

<sup>391</sup> *Id.*

<sup>392</sup> *Pro Se Clinics Overview*, MINN. JUSTICE FOUND., <https://www.mnjustice.org/our-programs/pro-se-clinics/> [https://perma.cc/M72F-BRAC]. MJF is funded largely by private law firms, government grants, and law schools. See MINN. JUSTICE FOUND., ANNUAL REPORT 2017 at 8, <https://www.mnjustice.org/about-mjf/reports/> [https://perma.cc/A4YN-Z2HA].

<sup>393</sup> Hannah Covington, *Help is just a walk-in center away for those braving the legal system without an attorney*, STAR TRIB. (Apr. 3, 2017), <http://www.startribune.com/minnesota-courts-work-to-keep-up-with-do-it-yourself-demand/418026573/> [https://perma.cc/V9VA-4F8L].

<sup>394</sup> R. Schaffler et al., Nat’l Ctr. for St. Courts, COURT STATISTICS PROJECT (Jan. 11, 2017), [http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP\\_Intro](http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Intro) [https://perma.cc/93QB-YH2K] (select “2016” for Data Year, “Civil Cases with Self-Represented Litigants” for Chart/Table, and “Minnesota” for State).

Yet as this study also demonstrates, much of the informality that characterizes the Northland legal context also lends itself to creative, relevant, and efficient professional and state responses to rural legal deserts.

#### D. Maine

Maine’s varying landscape features some 3,400 miles of rocky coastline<sup>395</sup> and a mountainous terrain that is more than 90 percent forested.<sup>396</sup> Given these aspects of the state’s physical geography, it is perhaps not surprising that Maine is sparsely populated, with 1.34 million people<sup>397</sup> residing across 31,000 square miles.<sup>398</sup>

Maine is divided into 16 counties, but the two southernmost ones—Cumberland and York, across which the Greater Portland Metropolitan Area sprawls—claim a disproportionate, 40% share of the population.<sup>399</sup> Many of the remaining counties—especially in the state’s northern and interior reaches—are confronting challenges associated with population loss and low population density.<sup>400</sup> Even Kennebec County, home to the state capital, Augusta, has been losing population in recent years.<sup>401</sup> With a population density of just 43 persons per square mile,<sup>402</sup> Maine is the least densely populated state not only in New England, but indeed among all states east of the Mississippi River.

This state study begins by providing background on Maine’s demographic and political challenges, focusing on net population decline among an aging, predominantly white population. It then describes how the number, geographic distribution, and changing demographic of attorneys in Maine has led to the creation of legal deserts in 14 of the state’s 16 counties. Penultimately, it discusses both historical efforts taken and present efforts currently underway to address the access to justice gap in Maine, in general, and rural parts of the state, specifically. Finally, the study concludes with a description of the University of Maine School of Law’s responses, along with that of its students, to the legal service needs of people residing in rural parts of Maine.

##### 1. Institutional Framework and Political Landscape

Physical geography and population density are only part of Maine’s story. The state faces compelling demographic challenges, most notably a population that ranks “annually among the oldest and whitest

<sup>395</sup> *Bluffs and Rocky Shores*, SEA GRANT ME., <https://www.seagrant.umaine.edu/coastal-hazards-guide/bluffs-and-rocky-shores> [<https://perma.cc/5PWP-F3V6>].

<sup>396</sup> See *FAQs About Maine’s Forests*, FORESTS FOR ME.’S FUTURE <http://www.forestsformainesfuture.org/forest-facts/> [<https://perma.cc/A5MB-FS8F>].

<sup>397</sup> See *Maine Population 2018*, WORLD POPULATION REV., <http://worldpopulationreview.com/states/maine-population/> [<https://perma.cc/JCZ3-2ST6>].

<sup>398</sup> See *Quick Facts Maine*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/ME> [<https://perma.cc/UAQ4-ZC2Z>] (type “Maine” in search bar and select “Population Estimates, July 1, 2016” from “Select a fact” menu).

<sup>399</sup> See *World Population Review*, available at <http://worldpopulationreview.com/states/maine-population/> (last visited May 13, 2018). Just under half a million residents live in Cumberland and York Counties. All 16 counties feature rural and regional communities, while the 14 counties other than Cumberland and York also include remote communities.

<sup>400</sup> See *Quick Facts Maine*, *supra* note 398. Data show that the majority of counties have experienced population declines since 2010, with the exception of some of the state’s southernmost counties, which reported minor growth. Just five counties experienced population growth between the time of the US Census in 2010 and estimates taken by the Census Bureau in 2015. Of these five counties, Cumberland had the highest growth rate of 3.03%. Trailing behind are York County at 2.01%, Waldo County at 0.87%, Hancock County at 0.53%, and Knox County at 0.35%. On the other end of the spectrum, there were multiple counties that showed declining populations, particularly in the northernmost counties. Aroostook County posted the greatest loss of 4.31%. Its neighbor, Washington County, saw a decrease of 3.65%, and Piscataquis saw a decrease in population of 3.51%. Other counties moving south also saw smaller losses, including Somerset, Oxford, and Lincoln.

<sup>401</sup> *Id.*

<sup>402</sup> See *id.*

states in the nation.”<sup>403</sup> Maine’s population in 2018 was 1,341,582,<sup>404</sup> up by just more than 10,000 residents since 2016.<sup>405</sup> Over 40% of the population resides in rural communities.<sup>406</sup> Ethnic and racial minority populations vary between rural and urban counties in Maine. For example, Black and Asian populations tend to account for most of the minority population in Cumberland and Androscoggin Counties. Native Americans tend to account for most of the non-white population in Washington and Aroostook Counties. The poverty rate in rural communities in Maine is over 15%, 2.6% higher than the state average.<sup>407</sup>

Maine’s demographic trends are cause for concern. These trends include the loss of younger residents, declining in-migration, declining municipal and state revenue tax bases, public school closures or reduction in faculty size due to depopulation, and an aging labor force approaching retirement.<sup>408</sup> Losing the younger demographic in Maine to out-migration results in lower birth rates; notably, the median age has increased from 37.7 to 44.2 years.<sup>409</sup>

An important nuance of the state’s anemic net population growth is that Maine’s foreign-born population accounts for a significant portion of this meager growth.<sup>410</sup> So while Maine’s population is growing due to in-migration and births in foreign-born populations, overall, the state is nevertheless experiencing natural population loss, meaning the deaths outpace the births.<sup>411</sup> This is broadly consistent with national trends: since 2010 nearly 93% of American population growth has come from racial and ethnic minorities; as such, it appears that attracting members of ethnic and racial groups to Maine is a key political and economic issue.<sup>412</sup> Maine is thus challenged to retain its younger population, support its older population, and attract members from diverse ethnic and racial groups.

Maine is challenged to respond to the professional service needs of each of these segments of the population, needs that are especially acute in rural communities. Maine must consider that a significant percentage of its population—Mainers and newcomers alike—may be drawn to the state’s rural reaches because of the existence of agricultural employment and the Agricultural Creative Economy,<sup>413</sup> affordable housing, low-crime environments, and below-capacity use of public infrastructure.<sup>414</sup> In mapping the political landscape and the potential opportunities for sustaining and repopulating rural communities, developing pathways to access affordable legal services is critical.

## 2. *Maine’s Legal Needs and Resource Shortfalls*

<sup>403</sup> See ME. STATE CHAMBER OF COMMERCE & ME. DEV. FOUND., MAINE’S LABOR SHORTAGE: NEW MAINERS AND DIVERSITY, (Sep. 22, 2016) <http://www.mdf.org/publications/Maines-Labor-Shortage-New-Mainers-and-Diversity/895/> [<https://perma.cc/CGT7-USLF>].

<sup>404</sup> See *Maine Population 2018*, WORLD POPULATION REV., <http://worldpopulationreview.com/states/maine-population/> [<https://perma.cc/JCZ3-2ST6>].

<sup>405</sup> See *id.*

<sup>406</sup> See Rural Policy Research Institute, Demographic and Economic Profile for Maine, available at <http://www.rupri.org/Forms/Maine.pdf> (last visited May 13, 2018).

<sup>407</sup> Table 3.

<sup>408</sup> See Robert W. Glover, *The Role of Immigrants, Asylum Seekers, and Refugees in Confronting Maine’s Demographic Challenges*, 25:1 ME. POL’Y REV. 47, 49 (2016); RICHARD BARRINGER ET AL., GREATER PORTLAND TOMORROW: CHOICES FOR SUSTAINED PROSPERITY, 43 (Sep. 15, 2017), <http://digitalcommons.usm.maine.edu/muskie/8/> [<https://perma.cc/26T4-ALW7>]; Penelope Overton, *Maine’s population growth still stagnant, new census numbers show*, PRESS HERALD (May 19, 2016), <https://www.pressherald.com/2016/05/19/maines-population-trickles-higher-reaching-nearly-1-33-million/> [<https://perma.cc/JJM8-CERX>].

<sup>409</sup> Glover, *supra* note 408, at 48.

<sup>410</sup> See *id.* at 49. See also Barringer, *supra* note 408, at 43; Overton, *supra* note 408.

<sup>411</sup> Glover, *supra* note 408, at 48–49.

<sup>412</sup> Glover, *supra* note 408, at 48–49.

<sup>413</sup> See ME. DEP’T OF AGRIC., THE AGRICULTURAL CREATIVE ECONOMY STUDY (2008), [http://digitalmaine.com/cgi/viewcontent.cgi?article=1000&context=ard\\_docs](http://digitalmaine.com/cgi/viewcontent.cgi?article=1000&context=ard_docs) [<https://perma.cc/XHB4-M4HF>].

<sup>414</sup> See JEFFREY BLOEM, NAT’L AGRIC. AND RURAL DEV. POLICY CTR., REFUGEES IN RURAL COMMUNITIES: A WIN-WIN? (Nov. 2014) [http://www.nardep.info/uploads/Brief34\\_RefugeesinRuralAhttps://perma.cc/3ZNB-8HEA](http://www.nardep.info/uploads/Brief34_RefugeesinRuralAhttps://perma.cc/3ZNB-8HEA) [<https://perma.cc/3ZNB-8HEA>].

In 1990, the Maine Commission on Legal Needs, chaired by the late Senator Edmund S. Muskie (Muskie Commission), found that legal aid providers in Maine were only able to meet the needs of 23% of the people eligible for and in need of their services.<sup>415</sup> A 2009 study found that the needs of 24% of the people eligible for and in need of services were met. An informal assessment, conducted in 2012, found that the needs of just 20% of the people eligible for and in need of services were met. The availability of civil legal services for Mainers challenged by poverty has sunk to perilous levels due to sharp declines in both federal- and state-funded civil legal aid.

In Maine, Pine Tree Legal Assistance, Inc. (Pine Tree) is the only service provider funded by the Legal Services Corporation (LSC). For 2018, Pine Tree will receive a total of \$1,477,918 to be allocated to basic field work (\$1,160,297), in support of Agricultural Workers (\$251,792), and in support of Native Americans (\$65,829). With a resource-sharing model developed by the Justice Action Group (JAG)<sup>416</sup> and administered by the Maine Civil Legal Services Fund Commission pursuant to statute, seven of Maine’s legal service providers—including Pine Tree—receive a percentage allocation of state funds generated from minimal filing fees on certain civil legal cases.<sup>417</sup> Thus, the two primary sources of state support for civil legal aid in Maine are the Maine Civil Legal Services Fund (“MCLSF”)<sup>418</sup> and the Interest on Lawyers Trust Accounts (“IOLTA”) program.<sup>419</sup> Both the MCLSF and IOLTA have experienced dramatic declines in revenue in recent years. Between FY 2008 and FY 2013, the combined annual state support for civil legal assistance in Maine declined by 29%.<sup>420</sup>

As the funding and staffing have decreased, the number of people served by Maine’s major legal aid providers fell by nearly 10% in the total number of people served by Maine’s major legal aid providers between 2009 and 2012.<sup>421</sup> During this same period, the number of Mainers living in poverty in Maine has increased by 15%, which increased the need for civil legal services.<sup>422</sup> The erosion of U.S. congressional support for the LSC, coupled with the restrictions on the type of clients and services LSC grantees can provide,<sup>423</sup> undermines the ability of legal services providers to meet the need. The decline in IOLTA revenue due to low interest rates and the limited funds distributed through the MCLSF aggravate the situation.

These unmet civil legal service needs are exacerbated when people living in rural communities do not have access to an attorney—whether due to limited access to legal aid attorneys, too few private attorneys, or the aging out of attorneys in rural communities. In 2013, resident attorneys—those living and practicing in Maine—was just under 4,000.<sup>424</sup> By 2016, the net decrease in Maine’s attorney count was in the single digits, but data revealed a quickly aging Bar: 19% of those attorneys were over the age of 65, 28% were aged 55-64, and fewer than 12% were below the age of 35.<sup>425</sup> Moreover, newly admitted members of the bar between the ages of 25 and 34 “are working and living primarily in the Greater

<sup>415</sup> See JUSTICE ACTION GRP., ACCESS TO JUSTICE: THE STATE OF ACCESS TO CIVIL JUSTICE IN MAINE (Feb. 2014), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReports/ME\\_2014\\_Report.auth.checkdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ME_2014_Report.auth.checkdam.pdf) [<https://perma.cc/6NM2-287S>] (stating the revelations of the 1990 Maine Commission on Legal Needs, chaired by Senator Edmund S. Muskie that “roughly 75% of the litigants in the civil justice system are not represented by counsel. Virtually all of these individuals are unable to pay for an attorney. . . .”); see also Hon. Howard Dana, *Legal Aid and Legal Services: An Overview*, 67 ME. L. REV. 276 (2015).

<sup>416</sup> See *infra* note [ ], and accompanying text.

<sup>417</sup> See Calien Lewis, *How Volunteers Saved Legal Aid in the 1990s*, 11.1 ME. POL’Y REV. 44–47 (2002).

<sup>418</sup> ME. REV. STAT. ANN. tit. 4, § 18-A (West, Westlaw, through end of 128th Reg. Sess. (2017)).

<sup>419</sup> Rule 6(a) of the Maine Bar Rules. *Rule 6*, BD. OF OVERSEERS OF THE BAR, [http://mebaroverseers.org/regulation/bar\\_rules.html?id=638764](http://mebaroverseers.org/regulation/bar_rules.html?id=638764) [<https://perma.cc/B4KH-SX9Y>].

<sup>420</sup> See *supra* note [ ].

<sup>421</sup> Table 2.

<sup>422</sup> Table 3.

<sup>423</sup> See *infra* note [ ].

<sup>424</sup> In 2016, the number of resident attorneys decreased by six for a total of 3,939. See BD. OF OVERSEERS OF THE BAR, 2016 ANNUAL REPORT, <http://www.mebaroverseers.org/about/pdf/2016%20Annual%20Report.pdf> [<https://perma.cc/263J-YC56>].

<sup>425</sup> See BD. OF OVERSEERS OF THE BAR, REPORT AND RECOMMENDATIONS OF THE BOARD OF OVERSEERS OF THE BAR’S TASK FORCE TO STUDY BAR DEMOGRAPHICS (Jun. 2014), <http://www.mebaroverseers.org/DemographicsTaskForce/Docs/Task%20Force%20Report%20-%2006.6.14.pdf> [<https://perma.cc/V728-MNW8>].

Portland and other more populous areas in the state, the result being dwindling numbers of lawyers in rural counties.”<sup>426</sup> The data thus suggest that the availability of lawyers in Maine’s rural communities is in sharp decline, leaving no question that access-to-justice challenges are imminently facing some parts of the state.<sup>427</sup> The unmet needs in rural communities range from complex family law matters involving family violence, substance abuse, mental illness, and conflicting jurisdiction to immigration legal assistance, foreclosure proceedings, and consumer debt matters.<sup>428</sup>

Some county-level detail puts a finer point on the access-to-justice crisis created by the confluence of an aging bar and the clustering of younger lawyers in the state’s southernmost counties. Only six lawyers serve Central Maine’s Piscataquis County (population just over 17,000),<sup>429</sup> and none of them is under the age of 40.<sup>430</sup> Little better is West Central Maine’s Franklin County (population 30,000),<sup>431</sup> which has 24 lawyers but only two under the age of 40.<sup>432</sup> Downeast’s Washington County<sup>433</sup> and West Central Maine’s Somerset County<sup>434</sup> have 27 and 34 lawyers, respectively, but each county has only four attorneys under the age of 40.<sup>435</sup>

### 3. *Policy Efforts to Confront Justice Challenges: Reflecting on Maine’s History of Leadership in Championing Access to Justice*

It is impossible to give enough credit to the herculean efforts of Senator Edmund S. Muskie, Judge Frank M. Coffin, the Honorable Howard H. Dana, Jr., and Chief Justice Daniel E. Wathen, all whom have been were mighty members of the access to justice relay team, since the late 1980s. These leaders passed the baton among themselves and to the next generation of Maine lawyer-leaders to ensure that “justice for all” is not a hollow promise. Senator Muskie was not only a state and national political icon, he was an advocate for equality and access to justice for all people. Muskie was the architect of the access to justice movement in Maine. “His work culminated in the [1990] *Report of the Maine Commission on Legal Needs*, a seminal document that still informs the ongoing effort to provide access to justice for Maine’s poor.”<sup>436</sup>

In response to LSC funding cuts in the early 1990s, Chief Justice Wathen delivered remarks at the 1995 Forum on the Future of Legal Services and asked: “Do the drastic changes in federal funding for legal services mean that Maine has to ration justice and abandon its goal of providing equal justice for its most vulnerable citizens?”<sup>437</sup> Chief Justice Wathen, in partnership with, among others, Federal District Court Judge Frank Coffin and Associate Justice Howard Dana, Jr. created the Justice Action Group (JAG).

<sup>426</sup> See *id.*

<sup>427</sup> See *id.*

<sup>428</sup> See 2017 Annual Report, MAINE CIVIL LEGAL SERVICES FUND COMMISSION, [http://courts.maine.gov/maine\\_courts/committees/MCLSFC-2017-Annual-Report.pdf](http://courts.maine.gov/maine_courts/committees/MCLSFC-2017-Annual-Report.pdf) (last visited May 13, 2018). See also BRENNAN CTR. FOR JUSTICE, CIVIL LEGAL SERVICES: LOW-INCOME CLIENTS HAVE NOWHERE TO TURN AMID THE ECONOMIC CRISIS (Jun. 25, 2010), <https://www.brennancenter.org/page/-/Justice/CLS/LSC-%20New%20Need%20Memo.pdf> [<https://perma.cc/5YXY-655E>].

<sup>429</sup> See QuickFacts, *Piscataquis County, Maine*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/piscataquiscountymaine/PST045216> [<https://perma.cc/6UVT-T9M5>].

<sup>430</sup> See *supra* note 425, at 10.

<sup>431</sup> See QuickFacts, *Franklin County, Maine*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/franklincountymaine/PST045217> [<https://perma.cc/7TUL-R5EV>].

<sup>432</sup> See *supra* note 425, at 10.

<sup>433</sup> Washington County population for 2016 was just over 31,000. See QuickFacts, *Washington County, Maine*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/washingtoncountymaine/PST045216> [<https://perma.cc/LR72-KLH2>].

<sup>434</sup> Somerset County population for 2016 was just over 51,000. See QuickFacts, *Somerset County, Maine*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/somersetcountymaine/PST045217> [<https://perma.cc/4W5X-PW3N>].

<sup>435</sup> See *supra* note 425, at 10.

<sup>436</sup> See The Honorable Kermit V. Lipez, *Rediscovering Senator Edmund Muskie*, 67 ME. L. REV. 217, 222 (2015).

<sup>437</sup> See Calien Lewis, *How Volunteers Saved Legal Aid in the 1990s*, 11.1 ME. POL’Y REV. 44–47 (2002).

The JAG is a judge-led, “non-partisan coalition of the major organizations in Maine concerned with assuring that Maine’s low-income and elderly citizens get equal access to civil justice.”<sup>438</sup> The coalition consists of the Maine Judicial Branch, the Maine State Bar Association, the Maine Trial Lawyers Association, the University of Maine School of Law, and Maine’s seven leading legal aid providers.<sup>439</sup> The mission of the JAG is to advocate for a system of justice that is fair to all and accommodates low-income and other vulnerable Mainers.

The JAG seeks to address unmet civil legal needs by supporting both provision of civil legal services to individual clients and systemic advocacy on behalf of a large numbers of similarly situated people and groups, all of whom face daunting barriers to civil justice.<sup>440</sup> One of the JAG’s major accomplishments was its work with the Maine Legislature in 1997 to pass a bill that created a funding stream for the Civil Legal Service Fund and a Commission to oversee allocation of those funds, the state-based funding stream discussed above.<sup>441</sup> The Maine Civil Legal Services Fund and its Commission were the realization of Senator Muskie’s dream. Not only does the MCLSF make it possible to employ legal aid attorneys full time, the Fund is an important catalyst for resident, private attorneys to volunteer to provide pro bono services to help address the unmet legal needs of people statewide.

The Board of Overseers of the Maine Bar—created by the Maine Supreme Judicial Court in 1978 to govern the conduct of lawyers as officers of the Court—needed to determine the number of resident, private attorneys that could augment the number of legal aid service providers, in light of anecdotal evidence that Maine’s bar seemed to be aging and that 14 of 16 counties faced a dramatic and uneven distribution of lawyers.<sup>442</sup> The Board is responsible for compiling and keeping current for the Court a register of all persons admitted as members of the Bar. In fulfilling that charge, the Board of Overseers annually analyzes attorney demographics including, but not limited to, registration status, age, admission year, gender, practice type, practice size, and geographic location. This core mission prompted the Board to identify and consider a more focused study of the greying of the bar and other access-to-justice issues facing Maine.<sup>443</sup> To conduct this study, the Board established the Task Force on Bar Demographics. The Task Force commenced its study in August 2013 and published its report and recommendations in June 2014.

The Task Force was comprised of members of the Board of Overseers, the Maine State Bar Association, the University of Maine School of Law, the Maine Assistance Program for Lawyers, the Judiciary, and the private bar. The Task Force members were diverse in age and gender, as well as from geographical and organizational standpoints. The charge of the Task Force was twofold: (1) to examine the challenges facing the Maine Bar; and (2) to explore how other jurisdictions were responding to these challenges. The Task Force divided into three study teams, one of which was the Rural/New Attorneys Team.

The Rural/New Attorneys Team sought to identify and address, among other things, the shifting bar demographics that leave rural communities underserved. The team developed a ten-question survey instrument designed to elicit data about the factors new lawyers considered when deciding where to practice. Among other questions, the survey asked respondents if they were engaged in a practice defined as “rural.”<sup>444</sup>

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<sup>438</sup> See Statement of the Hon. Jon D. Levy, Assoc. Justice of the Me. Supreme Judicial Court, before the Joint Standing Comm. on the Judiciary (Feb. 15, 2011) (on file with the author).

<sup>439</sup> See *id.* (Now numbering seven, the legal service providers that belong to the coalition include Pine Tree Legal Assistance, the Cumberland Legal Aid Clinic at the University of Maine School of Law, Disability Rights Maine, Immigrant Legal Advocacy Project, Legal Services for the Elderly, Maine Equal Justice Partners, Maine Volunteer Lawyers Project, and Pine Tree Legal Assistance, Inc.).

<sup>440</sup> See *id.*

<sup>441</sup> See *Maine Civil Legal Services Fund Commission Reports to the Joint Standing Committee on the Judiciary (2012-2018)*, ST. OF ME. JUD. BRANCH, [http://www.courts.maine.gov/maine\\_courts/committees/](http://www.courts.maine.gov/maine_courts/committees/) [<https://perma.cc/GG6B-P8K5>].

<sup>442</sup> See *id.*

<sup>443</sup> See *supra* note 425, at 3. The Task Force focused on bar demographics, as opposed to overall demographics.

<sup>444</sup> See *id.* This was defined as a place other than Portland or one of the state’s more populous areas.

The survey was distributed to 759 Maine lawyers who had practiced in the state for five years or less, with one goal being to identify what factors they considered when deciding where to practice.<sup>445</sup> More than one-third of the lawyers contacted responded to the survey. Only 17% of respondents had chosen a rural location (defined as “a location other than Greater Portland, Saco/Biddeford, Lewiston/Auburn, Augusta or Bangor”), and only about a quarter of those who reported choosing not to practice in rural areas had even seriously considered doing so.<sup>446</sup> When respondents were asked what influenced their decision not to pursue rural practice, the most selected reason was “lack of professional opportunities for partner,” with “income too low” a very close second.<sup>447</sup>

The survey also sought to identify whether respondents had considered a solo practice, as many small town lawyers are solo practitioners.<sup>448</sup> Although two-thirds of respondents had considered solo practice at one time, the vast majority decided against it, citing income instability as the primary reason.<sup>449</sup> It was this survey conducted by the Task Force that led, in part, to the June 2014 Report and Recommendations that provided the data cited above. In an effort to create a path of action to respond to the access-to-justice crisis created by Maine’s inevitable lawyer shortage documented in its 2014 report, the Task Force issued a set of recommendations.<sup>450</sup>

The Task Force members advised, first and foremost, that a call to action must include a variety of stakeholders.<sup>451</sup> Next, the Task Force offered eight recommendations: (1) Outreach efforts, such as forming rural attorney-law student mentor-mentee relationships; (2) Internship Programs, such as summer clerkships in rural practices; (3) Education, such as offering sponsored solo/small firm boot camps and solo/small firm practice curriculum at the law school; (4) Internet Resources, such as interactive listservs and informational websites; (5) Proxy Designation Consent<sup>452</sup>; (6) Regional Senior Attorneys’ Group, promoting mentorship and support; (7) Records and Data Management, providing cloud management software in support of best practice law firm management; and (8) Continued Study, promoting comprehensive and ongoing examination of bar demographics to facilitate the provision of legal services for rural communities and support services to legal providers.<sup>453</sup>

#### 4. *The Role of the Law School: Contributing to Access-to-Justice Policy Efforts*

Following on the recommendations of the Task Force on Bar Demographics and the policy efforts of the JAG, the University of Maine School of Law (Maine Law) in the summer of 2016, partnered with the Maine State Bar Association, the Maine Board of Overseers of the Bar, and the Maine Justice Foundation to plan and launch the Maine Law Rural Lawyer Project. In Spring 2017, with seed funding from the Maine Justice Foundation and in-kind contributions from the remaining three partners, Maine Law—the

<sup>445</sup> See *id.* at 2.

<sup>446</sup> *Id.*

<sup>447</sup> *Id.*

<sup>448</sup> See *id.*; see also Pruitt & Showman, *supra* note 18, at 472 (noting that the dominant practice types in rural America are solo practitioners and small firms.).

<sup>449</sup> *Id.*; see also Pruitt et al., *Justice in the Hinterlands*, *supra* note 29 (reporting survey results from law students who perceived they would earn a lower income in a rural practice). But see Nils Greger Olsson, 2015 *Income Fact Sheet*, STATE BAR OF TEXAS DEPARTMENT OF RESEARCH AND ANALYSIS, [https://www.texasbar.com/AM/Template.cfm?Section=Demographic\\_and\\_Economic\\_Trends&Template=/CM/ContentDisplay.cfm&ContentID=34183](https://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_Economic_Trends&Template=/CM/ContentDisplay.cfm&ContentID=34183); Joseph Jacobson and Robert A. “Tony” Ray, *Ethics Compliance Pushes Senior Lawyers into Canyon of Technological Divide*, 76 TEXAS BAR JOURNAL 123 (Feb. 2013), [https://www.texasbar.com/AM/Template.cfm?Section=Texas\\_Bar\\_Journal&Template=/CM/ContentDisplay.cfm&ContentID=21259](https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=21259).

<sup>450</sup> See *supra* note 425, at 15.

<sup>451</sup> See *id.*

<sup>452</sup> This refers to the recommendation that it be mandatory to designate a proxy on the annual registration form, particularly for solo practitioners. The proxy designation would require written consent as well as mandatory information sharing. See *id.*

<sup>453</sup> See *id.*



public and only law school in Maine—launched The Rural Lawyer Project with a “Preparing for Rural Practice” Workshop for attorneys and law students.<sup>454</sup>

The Maine Law Rural Lawyer Project places law students (formally referred to as “Fellows”) with practitioners in communities that would otherwise have limited access to legal services. Maine Law students work in the summers under the guidance of practitioners and are exposed to all facets of rural practice, including, but not limited to, legal research and drafting, dispute resolution, general practice case management, real estate transactions, trial practice, and ethics. Maine Law students are also encouraged by Maine Law faculty and staff, rural mentors, and other liaison attorneys to perform volunteer work for legal aid providers in the area where they are serving as Fellows. The purpose of this additional component of the fellowship is to coordinate the experiences of the Fellow and his or her mentor with supporting area legal aid attorneys to avoid unnecessary overlaps in legal service provision. In this way, the Rural Lawyer Project work is consistent with the cooperative template developed and implemented by the JAG and its seven legal service providers.

A committee representing the project’s partners deliberately chose Northern Maine’s Aroostook County as the site to launch the Maine Law Rural Lawyer Project Fellowships. They made this decision based on Aroostook County’s engaged and active county bar and that bar’s early commitment to the fellowship concept. “The County,” as it is known, is legendary, an iconic symbol of Maine’s grit, beauty, ruggedness—and rurality. Aroostook County is legendary. Named for a Native American word meaning “Beautiful River,” Aroostook is also referred to as “The Crown of Maine” and “The Last Frontier of the East.” Incorporated in 1839, The County is Maine’s northernmost area, bordered on three sides by Canada. Aroostook County is larger than Connecticut and Rhode Island combined, covering 6,672 square miles (three times the size of an average Californian county). While Aroostook County represents nearly 22% of the state’s land area, it is home to a mere 5.4% of the state’s population (just under 68,000).<sup>455</sup> The County is comprised of two cities, 55 towns, 11 plantations, and 110 unorganized townships.<sup>456</sup>

In the inaugural summer of the Maine Law Rural Lawyer Project, two students were placed as Fellows in the County.<sup>457</sup> In the second summer, these returning Fellows have the option of returning to the same or different counties, and will be joined by first-year Fellows. First-year Fellows receive \$6000 each for a minimum of ten weeks of full-time work; second-year Fellows receive \$7,500 each for the same commitment.<sup>458</sup>

The rural attorney mentors are competitively selected by a committee representative of the project partners. Rural attorney mentors complete an application, which allows the committee to: (1) determine the type of work that will be assigned to the Fellows, (2) measure the amount of time the mentor will dedicate to meaningful mentoring, and (3) assess a mentor’s purpose for engaging in the project. The rural attorney mentors, as well as each county’s bar association, are asked to identify regional points of contact, all of whom are responsible for linking Fellows to community organizations for the purpose of connecting the Fellows to social networks in each of the counties.

The workshop that launched the Maine Law Rural Lawyer Project, “Preparing for Rural Practice,” brings together attorneys and law students to discuss rural practice challenges and opportunities. This innovative half-day program features panels comprised of law faculty, rural lawyers, and judges discussing the fundamentals of rural practice, the lawyer’s role in rural practice and in the community, and pathways from law school to rural practice.

Two Maine Law students, fresh off their first year of law school, were introduced to workshop participants as the inaugural Fellows. Rising 2Ls Ryan Rutledge and Cameron Goodwin were heading to

<sup>454</sup> See *Preparing for Rural Practice*, UNIV. OF ME. SCH. OF LAW, <https://www.mainelawcommunity.org/s/184/16/interior.aspx?sid=184&gid=1&pgid=1049&cid=1924&ecid=1924> [https://perma.cc/M7CN-U4AK].

<sup>455</sup> See *Aroostook County, ME*, U.S. CENSUS BUREAU QUICKFACTS, <https://www.census.gov/quickfacts/fact/table/aroostookcountymaine/PST045216> [https://perma.cc/4RGE-EWNN].

<sup>456</sup> *Aroostook County Quick Facts*, AROOSTOOK COUNTY GOVERNMENT, <https://www.aroostook.me.us/> (last visited May 5, 2018).

<sup>457</sup> See *Maine Law to launch Rural Practice Fellowship during workshop on April 8th*, MAINE LAW (April 5, 2017), <https://mainelaw.maine.edu/news/rural-practice-fellowship-workshop-april-8th/>.

<sup>458</sup> Internal administrative selection documents on file in the Career Services Office at the University of Maine School of Law.

Aroostook County. Goodwin spent his fellowship experience at Smith and Associates Law Office, and Rutledge was at Bemis & Rossignol LLC, both in the City of Presque Isle, the largest city in Aroostook County. Reflecting on the summer experience, Ryan Rutledge had this to say:

Maine is largely a rural state once you leave the greater Portland area, and the Rural Practice Fellowship is doing a great job of showing law students like myself what life is really like if they want to practice in a smaller law firm in a rural community. In just a ten-week fellowship placement, I learned countless lessons and skills that I will carry with me throughout my legal career, and I can directly link those skills back to the Rural Practice Fellowship at Maine Law.

For summer 2018, Maine Law has funding to support four students in rural practices in communities outside of Cumberland and York counties. Qualifying communities within the remaining 14 counties must have fewer than 10,000 residents. Private attorneys in these communities had the opportunity to apply to be host mentors; the response from the private bar was overwhelmingly positive, and far in excess of the four spots for which there is funding. In the application, host mentor applicants were asked to identify why they have an interest in serving as a mentor; the response was a resounding, “We need attorneys here!”<sup>459</sup>

Maine Law students may apply for placement with selected law practices in Aroostook, Hancock, Knox, Piscataquis, Somerset, Waldo, and Washington counties. Ryan Rutledge will return in 2018 as a Fellow for a second summer, though he will serve at a different firm in a different county.

Maine Law students are also involved with Maine Law’s efforts to promote rural practice. Two days after the workshop that launched the Rural Lawyer Project, several students who attended the workshop asked about ways to get involved with promoting rural practice. Having traded correspondence with the former Dean of the University of Arkansas at Little Rock (Bowen) about that law school’s relatively new student organization called The Finch Society,<sup>460</sup> the Maine Law dean’s office encouraged Maine Law students to create their own chapter of The Finch Society. Within two weeks, Maine Law students had done just that.

The purpose of Maine Law’s Finch Society is to connect law students with rural and small-town practitioners and to provide a place for students to learn more about what rural and small town legal practice is like. Given that much of the State of Maine can be defined as rural, providing a space for law students to learn about and connect to practitioners in Maine is vital to ensure that Maine’s legal community continues to serve all of the state, not only metro areas. The Finch Society’s goal is to encourage law students to pursue careers in rural and small-town Maine. Access to legal resources is vital for all Americans and all Mainers. The Finch Society hopes to increase this access by providing information and resources to students so that they feel confident practicing the law in rural, regional, and small-town Maine.<sup>461</sup>

The Maine Law Finch Society planned several activities during the summer of 2017 in support of the Rural Lawyer Project and the two inaugural Fellows serving Aroostook County, but their activism had only just begun. Finch Society members drafted a bill that would give tax credits to lawyers practicing in undeserved parts of Maine. Specifically, Maine Law students drafted LD 1680 — “An Act to Create an

<sup>459</sup> Internal administrative selection documents on file in the Career Services Office at the University of Maine School of Law.

<sup>460</sup> In 2015, University of Arkansas, Little Rock, William H. Bowen School of Law student James Weeks founded The Finch Society. Named after Atticus Finch, the small-town lawyer in Harper Lee’s *To Kill a Mockingbird*, “the society’s mission is to expand legal representation in modest communities through recruitment, mentorship, and patronage. The goal is to provide access to justice across the country at large until legal counsel is within close reach of all who are touched by the law.” See *Law society at Bowen focuses on expanding rural justice*, U. ARK. WILLIAM H. BOWEN SCH. OF LAW (June 10, 2016), <http://ualr.edu/law/2016/06/10/law-society-at-bowen-focuses-on-expanding-rural-justice/> [https://perma.cc/7NKF-3FFZ].

<sup>461</sup> See *Student Organizations*, UNIV. ME. SCH. OF LAW, <https://mainelaw.maine.edu/student-life/student-organizations/> [https://perma.cc/LG9P-M39M]; Renee Cordes, *Maine Law tackles the need for more young lawyers in state’s rural communities*, MAINEBIZ (Nov. 13, 2017), <http://www.mainebiz.biz/article/20171113/CURRENTEDITION/311099996/maine-law-tackles-the-need-for-more-young-lawyers-in-state%27s-rural-communitie> [https://perma.cc/MDE8-36YW].

Access to Justice Income Tax Credit.”<sup>462</sup> These students are determined to encourage more lawyers to practice in rural areas. LD 1680 received the green light from the Legislative Council in October 2017 after being introduced as an emergency measure.<sup>463</sup>

On January 22, 2018, the Maine Legislature’s Taxation Committee held a public hearing on LD 1680.<sup>464</sup> The bill is sponsored by Representative Donna Bailey (D-Saco) and co-sponsored by Senator Lisa Keim (R-Oxford), and it is modeled on programs available for dentists and doctors to locate in rural Maine.<sup>465</sup>

The Maine State Bar Association testified in support of LD 1680.<sup>466</sup> Other supporters included several Maine Law staff and students, the Maine Bar Foundation, Legal Services for the Elderly, the Judicial Branch, and the Maine Justice Foundation. No one opposed the bill.<sup>467</sup> On February 8, 2018, the Taxation Committee held a working session and unanimously approved an amended bill that would create a five-year program offering a \$6000 annual tax credit for up to five lawyers per year in rural Maine according to criteria set by the Maine Supreme Judicial Court. As of this writing, the bill is awaiting consideration by the full legislature.

## 5. Conclusion

The issue of rural lawyer shortages is not unique to Maine, as this comparison among six states illustrates. LD 1680 gives Maine an opportunity to jump start a rural access-to-justice movement, both figuratively and literally. Such a movement would be in line with Senator Ed Muskie’s long-standing efforts to recognize access to justice challenges in Maine and to provide a resource stream to respond to the unmet civil legal services needs of Mainers, including those living in the state’s rural reaches.

With reasonable financial incentives—from loan repayment assistance to income tax credits—Maine has an opportunity to attract prospective law students to the state who could quickly become part of a network of leaders in rural communities. Mainers living in rural communities deserve access to justice that is local and responsive to their needs, and Maine Law students and graduates are eager to be part of the solution.

## E. South Dakota

South Dakota is unique in having a funded lawyer recruitment program to bring attorneys to rural areas.<sup>468</sup> In 2011 South Dakota’s state bar developed Project Rural Practice, an umbrella project aimed at recruiting rural attorneys.<sup>469</sup> A critical part of Project Rural Practice is the Rural Attorney Recruitment

<sup>462</sup> H.R. 128-1680, 2d Sess., at 1 (Me. 2017).

<sup>463</sup> See *id.* See also Renee Cordes, *Tax-credit bill for rural lawyers set for public hearing in Augusta*, MAINEBIZ (Jan. 15, 2018), <http://www.mainebiz.biz/article/20180115/NEWS01/180119966/1088> [https://perma.cc/SD9F-94CZ].

<sup>464</sup> *An Act To Create an Access to Justice Income Tax Credit: Hearing on L.D. 1680, Comm. on Taxation*, 128th Legis., 2d Sess. (Me. 2018).

<sup>465</sup> H.R. 128-1680, *supra* note 462; see also Hannah Alsgaard, *Rural Incentive Programs for Legal and Medical Professionals: A Comparative Analysis*, 59 S. D. L. REV. 585 (2014) (discussing the history of medical rural incentive programs and how those programs can inform legal rural incentive programs).

<sup>466</sup> *Maine Law continues to focus on Rural Practice Initiatives*, MAINE LAW (Feb. 2, 2018), <https://mainelaw.maine.edu/news/maine-law-continues-focus-rural-practice-initiatives/>.

<sup>467</sup> See 128<sup>th</sup> Maine Legislature, Second Regular Session, available at [http://legislature.maine.gov/legis/bills/bills\\_128th/billtexts/HP116801.asp](http://legislature.maine.gov/legis/bills/bills_128th/billtexts/HP116801.asp) (last visited Feb. 6, 2018).

<sup>468</sup> No other state has a paid incentive like South Dakota, but legislative proposals in Wisconsin and Maine have considered them. See *supra* Northeastern Minnesota and Northern Wisconsin. At least one state, North Dakota, is discussing modeling a program after South Dakota’s Project Rural Practice. Kathryn R.L. Rand, et. al., *Rural Justice in North Dakota*, 42 MITCHELL HAMLINE L. REV. 1027, 1033 (2016).

<sup>469</sup> *Project Rural Practice*, STATE BAR OF SOUTH DAKOTA (May 7, 2018, 9:55 AM), <http://www.statebarofsouthdakota.com/p/cm/ld/fid=82> [https://perma.cc/YG7U-ZBG4].

Program, run by South Dakota’s Unified Judicial System (UJS).<sup>470</sup> A first-in-the-nation approach to the issue of recruiting lawyers to rural areas, the Rural Attorney Recruitment Program relies on contributions from the state bar, the legislature, and local communities to provide five years of funding to qualifying attorneys who move to eligible rural areas.<sup>471</sup> Nearly five years into the program, the Rural Attorney Recruitment Program has been a success, funding support remains strong, and no attorney has left because of a lack of available work.

This study begins by providing some basic information on lawyer access in South Dakota. The majority of this study serves as an update on the Rural Attorney Recruitment Program and Project Rural Practice in general.<sup>472</sup> Finally, the study concludes with a discussion of the future recruitment of rural attorneys, including the role of South Dakota’s only law school, the University of South Dakota School of Law (USD Law).

### 1. *Institutional Framework and South Dakota’s Legal Needs*

As of 2016, South Dakota had a total population of 865,454,<sup>473</sup> and as of 2018, 1,995 lawyers were practicing as active Bar members.<sup>474</sup> According to the U.S. Census Bureau definition of “rural,” nearly 52% of South Dakota’s population is rural.<sup>475</sup> South Dakota’s residents, as well as its lawyers, are concentrated in its largest cities and the state capital.<sup>476</sup> Rural South Dakota is majority White, but it also features a significant Native American population.<sup>477</sup> Statewide, the Native American population is 9%, but much of that population is concentrated on the state’s nine reservations, all of which are located in rural areas.<sup>478</sup> South Dakota’s reservations face a particularly stark lawyer shortage. Despite a general shortage of rural attorneys, all but one county in the state has a resident attorney.<sup>479</sup> The only county without a lawyer is Corson County, part of the Standing Rock Sioux Reservation in north-central South Dakota.<sup>480</sup>

South Dakota has responded to the lawyer shortage and allocation problem with the Rural Attorney Recruitment Program, which helps counties with populations of 10,000 or less attract a private-practice attorney.<sup>481</sup> Because this state profile focuses on the Rural Attorney Recruitment Program, counties are categorized throughout as “qualifying” or “non-qualifying” based on the population line of 10,000 residents.<sup>482</sup>

<sup>470</sup> *Rural Attorney Recruitment Program*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM (May 7, 2018, 9:57 AM), <http://ujs.sd.gov/Information/rarprogram.aspx> [https://perma.cc/P4SQ-GSB7].

<sup>471</sup> See generally Patrick G. Goetzinger & Robert L. Morris, *Project Rural Practice: Its People & Its Purpose*, 59 S. D. L. REV. 444 (2014).

<sup>472</sup> In 2014, the South Dakota Law Review published a symposium issue that memorializes much of Project Rural Practice’s history and early success. See David Gilbertson, *Reflections on the Rural Practice of Law in South Dakota: Past, Present, and Future*, 59 S. D. L. REV. 433 (2014); see also Goetzinger & Morris, *supra* note 471; Pruitt & Showman, *supra* note 18; Alsgaard, *supra* note 465, at 585.

<sup>473</sup> *Collection of State Fact Sheets for South Dakota*, U.S. DEP’T AGRIC. ECON. RES. SERV. [hereinafter USDA South Dakota], <https://data.ers.usda.gov/reports.aspx?StateFIPS=46&StateName=South%20Dakota&ID=17854> [https://perma.cc/BY3F-BQK3].

<sup>474</sup> E-mail from Nicole Ogan, Comm’n/Membership Dir., State Bar of S.D. to Hannah Haksgaard, Assistant Professor of Law, Univ. of S.D. Sch. of Law (March 19, 2018, 11:09 CDT) (on file with Hannah Haksgaard).

<sup>475</sup> Table 1.

<sup>476</sup> Gilbertson, *supra* note 472, at 433 (“[South Dakota’s] lawyers are not spread evenly within the state’s population. Sixty-five percent of South Dakota attorneys reside in just four counties: Minnehaha, Pennington, Brown, and Hughes. Even at that, the remaining thirty-five percent of lawyers are heavily concentrated in Mitchell, Brookings, Watertown, Yankton, Huron, and the Northern Black Hills. Yet fifty-four percent of South Dakotans live and work in rural areas.”).

<sup>477</sup> *Quick Facts South Dakota*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/SD> [https://perma.cc/FX5X-3PA3].

<sup>478</sup> *Id.*

<sup>479</sup> DIRECTORY, <http://www.statebarofsouthdakota.com/p/us/lu/> (housing the South Dakota State Bar Directory).

<sup>480</sup> *Id.*

<sup>481</sup> S.D. CODIFIED LAWS § 16-23-2.1 (West, Westlaw through laws of the 2018 Regular Session effective March 23, 2018, and Supreme Court Rule 17-12) (“A county is eligible to participate in the recruitment assistance program if the county: (1) Has a population of ten thousand persons or less[.]”).

<sup>482</sup> A full map of qualifying and non-qualifying counties can be found at *Rural Attorney Recruitment Program Map*, S.D. UNIFIED JUDICIAL SYS., <http://ujs.sd.gov/Information/rarpm.aspx> [https://perma.cc/6A8Y-4PN8].

Before addressing Project Rural Practice and the Rural Attorney Recruitment Program, a short note on legal aid in South Dakota is in order. For 2018, South Dakota is estimated to receive a total of \$1,745,095 in LSC funding between its two qualifying legal aid providers Dakota Plains Legal Services, Inc. (Dakota Plains) and East River Legal Services (East River).<sup>483</sup> Dakota Plains has a strong presence on every reservation in the state.<sup>484</sup> For 2018, Dakota Plains is receiving \$397,877 for basic field work and \$953,608 for services provided to Native Americans.<sup>485</sup> Nearly every county served by Dakota Plains is a qualifying county under the Rural Attorney Recruitment Program.<sup>486</sup> For 2018, East River is receiving \$393,610 in LSC funding.<sup>487</sup> East River provides services to residents of thirty-three eastern South Dakota counties.<sup>488</sup> The main office is in Sioux Falls, South Dakota’s largest city.<sup>489</sup> Of the thirty-three counties whose residents are served by East River, twenty-two counties qualify for the Rural Attorney Recruitment Program.<sup>490</sup> East River and Dakota Plains, like most legal aid providers, struggle with sufficient funds to provide needed services. South Dakota’s legal aid providers are heavily reliant on federal funding because there is no direct state funding. Overall, funding from various sources has varied over the last six years for both Dakota Plains and East River.<sup>491</sup> The net result has held the total funding steady for Dakota Plains since 2014,<sup>492</sup> while East River has seen a decline.<sup>493</sup>

Neither Dakota Plains nor East River has the ability to provide full legal services to rural communities. LSC grantees can serve only clients who have a household income within 125% of the Federal Poverty Guidelines; are limited in the type of cases they can accept, including the exclusion of any fee-generating cases; can only represent one side on any particular case; and do not contract directly with government entities.<sup>494</sup> For these, and many other reasons, any suggestion that legal aid providers can provide sufficient access to justice in a rural community is wrong. Private-practice attorneys are needed. For example, Dakota Plains has offices in many small reservation towns, but a private-practice attorney in the same community as Dakota Plains could take criminal appointments, represent parties when Dakota Plains has a conflict or when Dakota Plains is serving as opposing counsel, and serve clients whose incomes fall above the maximum income to qualify for Dakota Plains’ services. Private-practice attorneys can also handle every type of case, including those from which Dakota Plains and East River are

<sup>483</sup> LEGAL SERV. CORP., *supra* note 243, at 8.

<sup>484</sup> See generally DAKOTA PLAINS LEGAL SERV., <https://www.dpls.org/> [<https://perma.cc/Q4XC-W76B>].

<sup>485</sup> LEGAL SERV. CORP., *supra* note 243, at 8.

<sup>486</sup> *Areas Served*, DAKOTA PLAINS LEGAL SERV., <https://www.dpls.org/areas-served> [<https://perma.cc/UQ7Q-ZZGT>]. Dakota Plains has branch offices in Mission (located in Todd County, qualifying); Ft. Thompson (located in Buffalo County, qualifying); Ft. Yates (located in North Dakota), Eagle Butte (located in Dewey and Ziebach Counties, both qualifying, with Dewey participating), Pine Ridge (located in Oglala Lakota County, non-qualifying), Sisseton (located in Roberts County, non-qualifying), and Rapid City (located in Pennington County, non-qualifying).

<sup>487</sup> LEGAL SERV. CORP., *supra* note 243, at 8.

<sup>488</sup> EAST RIVER LEGAL SERV., <http://erlservices.org/> [<https://perma.cc/DPQ8-RL7D>] (listing the counties served).

<sup>489</sup> *Id.*

<sup>490</sup> East River provides services in McPherson (qualifying and participating); Edmunds (qualifying); Faulk (qualifying); Brown (non-qualifying); Marshall (qualifying and participating); Day (qualifying); Spink (qualifying and participating); Hand (qualifying and participating); Beadle (non-qualifying); Clark (qualifying); Codington (non-qualifying); Hamlin (qualifying); Deuel (qualifying); Brookings (non-qualifying); Kingsbury (non-qualifying); Jerauld (qualifying and participating); Sanborn (qualifying); Miner (qualifying and participating); Lake (non-qualifying); Moody (qualifying); Aurora (qualifying); Davison (non-qualifying); Hanson (qualifying); McCook (qualifying and participating); Minnehaha (non-qualifying); Douglas (qualifying and participating); Hutchinson (qualifying); Turner (qualifying); Lincoln (non-qualifying); Bon Homme (qualifying); Yankton (non-qualifying); Clay (non-qualifying); and Union (non-qualifying). *Rural Attorney Recruitment Program Map*, S.D. UNIFIED JUD. SYS., <http://uj.s.sd.gov/Information/rarpm.asp> [<https://perma.cc/9SR6-FT39>]; *Counties Served*, EAST RIVER LEGAL SERV., <http://erlservices.org/> [<https://perma.cc/DPQ8-RL7D>].

<sup>491</sup> Legal Services Corp. Office of Data Governance & Analysis, *Grant Activity Reports 2008-2016*, [http://public.tableau.com/views/Grantee\\_Data\\_Page\\_Funding/GranteeFunding](http://public.tableau.com/views/Grantee_Data_Page_Funding/GranteeFunding) (follow drop down “State” menu for “SD”, then choose organization name)

<sup>492</sup> Dakota Plains Legal Services’ 2016 Internal Revenue Serv. Form 990 Schedule A, page 2 (on file with the Harvard Law Library).

<sup>493</sup> East River Legal Services’ 2015 Internal Revenue Serv. Form 990 Schedule A, page 2 (on file with the Harvard Law Library).

<sup>494</sup> See *What is Legal Aid?*, *supra* note 46; Telephone Interview by Hannah Haksgaard with Annemarie Michaels, Managing Attorney, Dakota Plains Legal Serv. (Nov. 14, 2017) [hereinafter Michaels Interview].

precluded by institutional limitations. To help meet this need, South Dakota developed a first-in-the-nation approach to attracting private-practice attorneys to rural areas.

## 2. *Policy Efforts to Confront Justice Challenges: Project Rural Practice*

Although there had long been awareness of the growing rural lawyer shortage in South Dakota, broadcast in part through the advocacy of Chief Justice Gilbertson of the South Dakota Supreme Court, work in earnest on a solution did not begin until 2011.<sup>495</sup> Over the next several years, the South Dakota state bar, judiciary, and legislature worked to develop the idea of Project Rural Practice. In 2013, the South Dakota legislature passed HB 1096, the basic funding bill for the Rural Attorney Recruitment Program part of Project Rural Practice.<sup>496</sup> HB 1096 allocated state funds to make incentive payments to qualifying lawyers who move to and work in rural counties. Lawyers can qualify for the incentive payments by opening a solo practice or joining an existing firm.

The Rural Attorney Recruitment Program provides each participant five years of incentive payments totaling about \$13,288 per year.<sup>497</sup> The legislature arrived at this funding amount hoping it would allow participants to make student loan payments and cover basic operating expenses. Although the legislature looked to tuition at USD Law to set a reasonable incentive payment amount, the Rural Attorney Recruitment Program is not tied to USD Law nor is it a tuition reimbursement program, so a lawyer without student loans or a lawyer from a different law school, for example, receives the same incentive payment.<sup>498</sup> The funding comes from three sources: 50% from the state, 15% from the state bar, and 35% from the county where the lawyer is placed.<sup>499</sup> HB 1096 was the establishing legislation, but it was limited in two important ways: first, the bill was written as a pilot program and provided funding for only sixteen lawyers; and second, the bill limited funding to counties with populations fewer than 10,000, which includes 48 of the state’s 66 counties. Although the majority of the state’s counties are eligible for the program, small municipalities in populated counties were not eligible under the original program.

Despite these limitations, the Rural Attorney Recruitment Program quickly attracted young lawyers. Early on, the program faced skepticism from county governments that, tight on funds in general, were being asked to help pay for the presence of a private-practice lawyer.<sup>500</sup> Rural counties and municipalities in South Dakota generally do not have full-time state’s attorneys, city attorneys, or public defenders.<sup>501</sup>

<sup>495</sup> Gilbertson, *supra* note 472, at 438–39 (discussing his early efforts to bring attention to the rural lawyer deficiency);

Goetzinger & Morris, *supra* note 471, at 446–48 (discussing the origins of Project Rural Practice).

<sup>496</sup> Codified at S.D. CODIFIED LAWS § 16-23-1 (West, Westlaw through laws of the 2018 Reg. Sess. effective March 23, 2018, and Supreme Court Rule 17-12), et seq.

<sup>497</sup> S.D. CODIFIED LAWS § 16-23-5 (West, Westlaw through laws of the 2018 Reg. Sess. effective March 23, 2018, and Supreme Court Rule 17-12). This dollar amount was set “in an amount equal to ninety percent” of USD Law’s in-state tuition as it was in 2013. *Id.* The reimbursement amount is tied directly to the 2013 tuition, not current tuition. Accordingly, even though USD Law’s tuition has increased since 2013, the incentive payment has remained the same. See *Tuition and Fees*, UNIV. S.D. SCH. OF L., <http://www.usd.edu/law/tuition-and-fees> [https://perma.cc/TD5T-RGCY].

<sup>498</sup> S.D. CODIFIED LAWS § 16-23-5 (West, Westlaw through laws of the 2018 Reg. Sess. effective March 23, 2018, and Supreme Court Rule 17-12) (“Any attorney who fulfills the requirements of the recruitment assistance program established pursuant to this chapter, is entitled to receive an incentive payment in five equal annual installments, each in an amount equal to ninety percent of the University of South Dakota School of Law resident tuition and fees as determined on July 1, 2013.”).

<sup>499</sup> S.D. CODIFIED LAWS § 16-23-11 (West, Westlaw through laws of the 2018 Reg. Sess. effective March 23, 2018, and Supreme Court Rule 17-12).

<sup>500</sup> For just one example of a county’s hesitation to provide funding, see Elizabeth Grosz, *Douglas County First in State to Participate in Rural Attorney Recruitment Program*, YANKTON DAILY PRESS & DAKOTAN (Nov. 13, 2013), [http://www.yankton.net/community/article\\_bc932114-4ce4-11e3-8b7c-001a4bcf887a.html](http://www.yankton.net/community/article_bc932114-4ce4-11e3-8b7c-001a4bcf887a.html) [https://perma.cc/75V7-4ED5]. See also Alsgaard, *supra* note 465, at 611–12.

<sup>501</sup> Because part-time state’s attorneys are so prevalent, South Dakota law provides for differences between full-time and part-time state’s attorneys. Compare S.D. CODIFIED LAWS § 7-16-19 (West, Westlaw through laws of the 2018 Reg. Sess. effective March 23, 2018, and Supreme Court Rule 17-12) with S.D. CODIFIED LAWS § 7-16-19.1 (West, Westlaw through laws of the 2018 Reg. Sess. effective March 23, 2018, and Supreme Court Rule 17-12). For counties that cannot even come up with a resident state’s attorney, state law allows non-residents to serve as the state’s attorney so long as (1) the county has a population under 5,000 and (2) the state’s attorney lives in a contiguous county. S.D. CODIFIED LAWS § 7-16-31 (West, Westlaw through laws of the 2018 Reg. Sess. effective March 23, 2018, and Supreme Court Rule 17-12). Some state’s attorneys service more than one

Instead, they contract with private-practice attorneys to provide part-time services. When there are no local attorneys, counties and municipalities must pay for attorneys to travel from other counties to serve as prosecutors and defense counsel, which greatly increases legal costs for the county.<sup>502</sup> Gregory County serves as an example.

Gregory County, a qualifying county in south-central South Dakota, has seven attorneys. Three of those attorneys work together in a single office, and one of those attorneys is the part-time State’s Attorney for Gregory County.<sup>503</sup> All three lawyers in the firm are thus conflicted out of criminal defense court appointments, abuse and neglect proceedings, and involuntary commitments.<sup>504</sup> Another attorney in the county works in-house for a bank, making her generally unavailable for any court appointments.<sup>505</sup> Two more attorneys are near retirement age and have refused all court appointments for the last several years, instead opting to focus on estate planning, real estate, and taxes.<sup>506</sup> One of those attorneys plans to retire in the next year.<sup>507</sup> While providing needed services, these two attorneys do not handle any family law, criminal law, or personal injury cases.<sup>508</sup> The final attorney in the county can take criminal appointments, but she was the State’s Attorney for years, meaning she frequently has conflicts in criminal matters.<sup>509</sup> This leaves Gregory County importing attorneys for court appointments.<sup>510</sup> And of course, even if there were legal aid attorneys available, they could not fulfill the need because they cannot contract with the government.<sup>511</sup>

Thus Gregory County, despite its seven lawyers, has an access to justice issue. However, Gregory County will soon be participating in the Rural Attorney Recruitment Program. Rachelle Norberg, who graduated from USD Law Spring 2018 and is from Gregory County, will be returning to practice law as a participant in the Rural Attorney Recruitment Program.<sup>512</sup> Because criminal appointments are an issue for Gregory County, the County agreed to fund Norberg on the condition that she takes criminal

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county. See *SD State’s Attorneys*, S.D. ST.’S ATT’YS ASS’N, <http://sdstatesattorneys.org/sd-states-attorneys/> [<https://perma.cc/7XHQ-MT9S>] (indicating that James Sword serves as the state’s attorney for the contiguous counties of Fall River and Oglala Lakota and that Alvin Pahlke serves as the state’s attorney for the contiguous counties of Todd and Tripp).  
<sup>502</sup> See Ethan Bronner, *No Lawyer for Miles, So One Rural State Offers Pay*, N.Y. TIMES (Apr. 8, 2013), <http://www.nytimes.com/2013/04/09/us/subsidy-seen-as-a-way-to-fill-a-need-for-rural-lawyers.html> [<http://perma.cc/4M6L-UADA>] (noting that during the weekly court session in Bennett County, South Dakota, the local lunch place included “a table of lawyers, the ones in suits, ties and no hats. All had driven more than two hours from Rapid City and Pierre, paid by Bennett County, which also pays to transport prisoners 100 miles away because it has no functioning jail.”). In South Dakota, state’s attorneys are governed by South Dakota Codified Laws Chapter 7-16, which generally contemplates that a county’s state’s attorney will reside in that county. See S.D. CODIFIED LAWS § 7-16-31 (West, Westlaw through laws of the 2018 Reg. Sess. and Supreme Court Rule 17-12) (implying a presumption of a residency requirement by noting that “[i]n any county with a population of less than five thousand persons, no state’s attorney is disqualified from holding office for failure to be a resident of that county if the state’s attorney is a resident of a county which is contiguous to the county in which the state’s attorney holds such office.”).

<sup>503</sup> See *Attorneys*, JOHNSON POCHOP & BARTLING LAW OFFICE, <http://rosebudlaw.com/attorneys.html> [<https://perma.cc/7WVA-PHLR>]. Stephanie Pochop, one of the firm’s lawyers, was the state bar president in 2016-2017. *Lawyers Elect Pochop President*, WINNER ADVOCATE, <http://thewinneradvocate.com/lawyers-elect-pochop-president/> (last visited May 23, 2018) [<https://perma.cc/6N94-CFRD>]. Amy Bartling, one of the firm’s lawyers, serves as Gregory County’s State’s Attorney. *Amy R. Bartling*, JOHNSON POCHOP & BARTLING LAW OFFICE, <http://rosebudlaw.com/attorney3.html> [<https://perma.cc/2876-67X8>]; *SD State’s Attorneys*, SOUTH DAKOTA STATE’S ATTORNEYS ASSOCIATION, <http://sdstatesattorneys.org/sd-states-attorneys/> [<https://perma.cc/3W7Y-E46E>].

<sup>504</sup> See *Attorneys*, *supra* note 503 (looking at each attorney’s biography provided on the webpage indicates their background and professional conflicts).

<sup>505</sup> Interview by Hannah Haksgaard with Kelsea Kenzy Sutton, Compliance Officer, First Fidelity Bank, in Vermillion, S.D. (Mar. 21, 2018) [hereinafter Sutton Interview].

<sup>506</sup> *Id.*

<sup>507</sup> Interview by Hannah Haksgaard with Rachelle Norberg, in Vermillion, S.D. (Mar. 20, 2018) [Norberg Interview].

<sup>508</sup> Sutton Interview, *supra* note 505.

<sup>509</sup> *Id.*

<sup>510</sup> Gregory County frequently imports attorneys from Charles Mix County, Tripp County, Davison County, Lyman County, and even as far away as Hughes County (home of the state capital). *Id.* The county has twice had to reach further for qualified non-conflicted attorneys: in two recent murder trials the County contracted with lawyers out of Rapid City and Sioux Falls. *Id.*

<sup>511</sup> Michaels Interview, *supra* note 494.

<sup>512</sup> Norberg Interview, *supra* note 507.

appointments.<sup>513</sup> Norberg will be taking over a solo practice in the municipality of Burke where she will continue the real estate and title work done by the current lawyer, who will soon be retiring, but she will also begin taking criminal appointments and at least one pro bono case per year.<sup>514</sup> Norberg will also be serving as a city attorney for four municipalities, three in Gregory County and one in contiguous Charles Mix County.<sup>515</sup> Gregory County perfectly illustrates that having private-practice attorneys in a county saves the county money on travel costs. Despite some initial resistance to participating in the Rural Attorney Recruitment Program, counties have realized that contributing 35% of the incentive payment and effectively eliminating travel costs not only makes financial sense for the government but also provides benefits to the local population by providing easier access to a private-practice attorney.<sup>516</sup> If an additional lawyer in Gregory County—which already has seven lawyers—makes such a large difference, just imagine the impact a new lawyer can have in a county with one or no lawyers.

Despite initial skepticism, as of fall 2017, all but one county approached by the UJS to participate in the Rural Attorney Recruitment Program has signed a contract.<sup>517</sup> In several situations, the counties’ financial contributions towards the program are being covered in whole or part by a private donor or a municipality located in the county.<sup>518</sup> After HB 1096 was passed in 2013, the UJS initially approached counties about participating in the program without having particular participants in mind. Since then, negotiations between UJS and the counties have typically occurred after a prospective participant has been identified. Three counties approached the UJS about finding an attorney by submitting a notice of intent to participate in the Rural Attorney Recruitment Program; two of those counties have secured a participant.<sup>519</sup> The Rural Attorney Recruitment Program was able to fill the original sixteen slots for attorneys and has since secured state funding for another sixteen participants.

As of fall 2017, fifteen lawyers are currently participating in the program, and four more participants have signed contracts and will begin practicing after passing the bar in 2018.<sup>520</sup> Several others are negotiating their participation, but contracts are not yet signed.<sup>521</sup> The program’s current participants are geographically well-spaced around the state (as illustrated by a map on the State Bar website),<sup>522</sup> but even considering the four participants set to begin practice in 2018, twenty-nine eligible counties still will not

<sup>513</sup> *Id.*

<sup>514</sup> *Id.*; Sutton Interview, *supra* note 505.

<sup>515</sup> Norberg Interview, *supra* note 507.

<sup>516</sup> See, e.g., *ISBA Rural Practice Committee Seeks Attorneys Willing To Hire Summer Clerks, Full-Time Associates In 2016*, IOWA LAWYER WKLY. (Oct. 7, 2015), <http://www.iowabar.org/page/IAWeekly100715/.htm> [<https://perma.cc/M5ZP-BHGU>] (“[Nebraska and South Dakota] have some rural counties with no attorneys. This has created a difficult situation when courts need to appoint attorneys to defend individuals charged in a criminal matter, or when towns need a city attorney. It has also created a significant cost when courts or towns have to bring in attorneys from miles away.”).

<sup>517</sup> Grant County, in the northeast corner of the state, initially turned down a Project Rural Practice placement, but after a private-practice attorney agreed to pay the county’s entire share, Grant County signed a contract and a Project Rural Practice lawyer is now practicing alongside the donor attorney. *Jackson Schwandt Joins Coester Law Office*, VALLEY EXPRESS (May 9, 2016), <http://thevalleyexpress.com/2016/05/09/jackson-schwandt-joins-coester-law-office/> [<https://perma.cc/9FNS-NT3W>]. Bill Coester, the donor attorney, approached Project Rural Practice about taking on a participant as an associate so he could begin to transition into retirement. E-mail from Bill Coester to Hannah Haksgaard, Attorney at Law (Nov. 20, 2017, 16:23 CST) (on file with Hannah Haksgaard). Custer County, on the western edge of the state, also turned down a Project Rural Practice placement very early during the program. Custer County has not been approached again with a specific attorney wanting to return home to practice. Telephone Interview with Suzanne Star, Director of the Division of Policy and Legal Services of the South Dakota Unified Judicial System (Dec. 1, 2017) [hereinafter Star Interview].

<sup>518</sup> See, e.g., *Jackson Schwandt Joins Coester Law Office*, *supra* note 517.

<sup>519</sup> Mellette County (spot filled), Ziebach County (spot not filled), and Bennett County (spot to be filled in 2018) are the three counties that contacted the UJS about finding an attorney. Star Interview, *supra* note 517.

<sup>520</sup> Star Interview, *supra* note 517. Participants are currently practicing in: Grant County; Marshall County; Spink County; Hand County; Jerauld County; Miner County; McCook County; Douglas County; Tripp County (two lawyers); McPherson County; Haakon County; Lyman County; Perkins County; and Harding County. New participants will be added in: Bennett County; Mellette County; Dewey County; and Gregory County in 2018. *Rural Attorney Recruitment Program Map*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, <http://ujs.sd.gov/Information/rarpmap.aspx> [<https://perma.cc/JEF8-YV8R>].

<sup>521</sup> Star Interview, *supra* note 517.

<sup>522</sup> *Rural Attorney Recruitment Program Map*, SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM, <http://ujs.sd.gov/Information/rarpmap.aspx> [<https://perma.cc/JEF8-YV8R>].



have a Rural Attorney Recruitment Program participant.<sup>523</sup> The UJS does not attempt to persuade potential participants to move to the most remote counties or the counties with the fewest lawyers, as it recognizes that long-term fit is the most important objective when placing an attorney.<sup>524</sup>

Of the fifteen current participants, eleven graduated from USD Law; two graduated from law school out-of-state but are originally from South Dakota; and two had no prior ties to South Dakota.<sup>525</sup> All four lawyers who will begin the program in 2018 attended USD Law.<sup>526</sup> Thus, only four of the current participants did not graduate from USD Law.<sup>527</sup> Two of those attorneys, Zach Pahlke and Jake Fischer, returned home to practice law.<sup>528</sup> Zach Pahlke grew up in Winner, a small town in Tripp County in south-central South Dakota, and received his bachelors and J.D. degrees from the University of Nebraska, Lincoln.<sup>529</sup> After law school, Pahlke began practicing at his parents’ law firm in Winner as a Rural Attorney Recruitment Program participant.<sup>530</sup> He also serves as the part-time state’s attorney for contiguous Mellette County and the part-time deputy state’s attorney for contiguous Tripp and Todd Counties.<sup>531</sup>

Jake Fischer grew up on a farm outside of Parkston, a small town in Hutchinson County in southeastern South Dakota. He is a graduate of the law school at the University of Minnesota.<sup>532</sup> After a clerkship and some work at a rural-focused non-profit, Fischer began participating in the Rural Attorney Recruitment Program and joined an existing law firm, opening a new office for the firm in Corsica, a small town in Douglas County, which is a county contiguous with Fischer’s home county.<sup>533</sup>

Notably, two participants with no previous ties to the state have moved to South Dakota. Kristen Kochejian is from North Carolina and received her J.D. from the Oklahoma City University School of Law.<sup>534</sup> Jennifer English is originally from a small town in Indiana and received her J.D. from Ohio Northern University.<sup>535</sup> Both Kochejian and English were looking for traditional public interest jobs when they learned about the Rural Attorney Recruitment Program through national media coverage and subsequently applied.<sup>536</sup> Both Kochejian and English report that they are happy with the program, the mentorship they have received, their legal practices, and their decisions to relocate to South Dakota.<sup>537</sup> Both consider their work to be a form of public interest lawyering, particularly because they provide legal services to multiple generations of single families.<sup>538</sup>

Kochejian and English are unique in being new to South Dakota, but they are typical in terms of their success in the program. No participants have left the program due to a shortage of work.<sup>539</sup> In fact, at least

<sup>523</sup> See *id.*

<sup>524</sup> Star Interview, *supra* note 517.

<sup>525</sup> *Id.*

<sup>526</sup> *Id.*

<sup>527</sup> *Id.*

<sup>528</sup> This is not surprising, as we would expect more rural students to be willing to return to rural areas to practice. See Lisa R. Pruitt et. al., *supra* note 29, at 631-32 (noting that law student interest in practicing in a rural area was generally higher for students from rural areas).

<sup>529</sup> E-mail from Zach Pahlke to Hannah Haksgaard (Dec. 1, 2017, 12:27 CST) (on file with Hannah Haksgaard) [hereinafter E-mail from Pahlke]; see also Dan Merritt, *Pahlke Becomes Hometown Attorney*, WINNER ADVOCATE, March 11, 2015, <http://thewinneradvocate.com/pahlke-becomes-hometown-attorney/> [https://perma.cc/YG4T-UM22].

<sup>530</sup> See *id.*

<sup>531</sup> See *id.*; see also Jeri Thomas, *Zach Pahlke Appointed as Mellette County State’s Attorney*, DAKOTA RADIO GROUP (Apr. 2, 2015), <http://www.drgnews.com/zach-pahlke-appointed-mellette-county-states-attorney/> [https://perma.cc/7NPK-7AWX].

<sup>532</sup> See E-mail from Jake Fischer to Hannah Haksgaard (Dec. 8, 2017, 11:56 CST) (on file with Hannah Haksgaard).

<sup>533</sup> See *id.*

<sup>534</sup> Telephone Interview with Kristen Kochejian (Nov. 27, 2017) [hereinafter Kochejian Interview].

<sup>535</sup> Telephone Interview with Jennifer English (Nov. 29, 2017) [hereinafter English Interview].

<sup>536</sup> See *id.*; see also Kochejian Interview, *supra* note 536.

<sup>537</sup> Kochejian Interview, *supra* note 534.

<sup>538</sup> *Id.*

<sup>539</sup> Interview by Hannah Haksgaard with David Gilbertson, Chief Justice, S.D. Supreme Court, in Vermillion, S.D. (Oct. 5, 2017) [hereinafter Gilbertson Interview]. The program did lose two attorneys, a husband and wife, when one received a dream job offer to teach at South Dakota State University. Brittany and Ryan McKnight were both Rural Attorney Recruitment Program participants for a short time period in Philip, South Dakota, before relocating to Brookings, South Dakota. Del Bartels, *Kjerstad*

one participant has so much business that he has taken on associates.<sup>540</sup> This preliminary success is certainly due in part to support for Project Rural Practice by numerous entities in South Dakota. In addition to the administrative services provided by the UJS, the state bar and its membership play a crucial role in supporting the program. The state bar provides support and funding to the Rural Attorney Recruitment Program. For example, Project Rural Practice conducted a successful fundraising campaign several years ago to fund the state bar’s funding commitment. The fundraising effort, called the Cozad Challenge, raised over \$190,000 from state bar members with a matching portion from Fred and Luella Cozad.<sup>541</sup> Fred Cozad was a rural attorney from Bennett County and one of the inspirations for Project Rural Practice.<sup>542</sup>

Beyond providing financial resources, the state bar membership has been active and invested in the program. Rural attorneys, especially those beginning to contemplate retirement, have welcomed participants into their law practices and served as mentors.<sup>543</sup> Of the fifteen current participants, five started solo practices while ten joined existing firms. Although most participants have built-in mentors because they are joining existing firms, those opening solo practices are matched with mentoring attorneys.<sup>544</sup> The mentors are assigned based not on location, but rather on compatibility.<sup>545</sup> The UJS attempts to connect each participant with the local clerks of court, who are valuable resources based on their knowledge of local procedural processes.<sup>546</sup> Participants starting solo practices are also well-supported by the communities they enter—two counties have provided free office space in county courthouses for participants opening solo practices, and another county has committed to doing the same for a participant who passed the February 2018 bar and will soon begin practicing.<sup>547</sup>

The state legislature has also continued to support Project Rural Practice. In addition to providing funding, the legislature has permitted needed changes to the program. HB 1053, passed in 2017, allows small municipalities in populated counties, which were formerly excluded, to participate in the Rural Attorney Recruitment Program.<sup>548</sup> One example of why this change was needed is Wall, South Dakota. Rapid City—South Dakota’s second-largest city, with 390 registered lawyers and a population of 67,956—is in western Pennington County, a county that spans more than a hundred miles from east to west. Wall—with no registered lawyers and a population of 766—is in eastern Pennington County.<sup>549</sup> Under the original legislation, Wall was ineligible to participate because Pennington County has over 10,000 residents. HB 1053 amended the law to allow individual municipalities with populations under

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*McKnight Law Office Is Open for Business*, PIONEER REV. (Sept. 30, 2015), <http://pioneer-review.com/pioneer-review/kjerstad-mcknight-law-office-open-business> [https://perma.cc/KFD7-4NVW].

<sup>540</sup> Clay Anderson is an attorney located in Miller, a town in Hand County, who practices at his own law firm. *Our Team*, DAKOTA LAW FIRM, PROF. L.L.C., <http://www.dakotalawfirm.com/our-team/> [https://perma.cc/SM8Q-TEVA]. A native of Miller, Anderson returned to his hometown after graduating from USD Law as a Rural Attorney Recruitment Program participant and began as an associate with an established firm. Clay then opened his own law firm and has already hired two associates, one of whom then left to start his own law firm. Clay is based in Miller, but takes cases from all over the state and credits his willingness to travel, his life prior to law school—including being an Iraq veteran—his work ethic, and his values and integrity as critical to his success in rural legal practice. E-mail from Clay Anderson to Hannah Haksgaard (Nov. 16, 2017, 10:09 CST) (on file with Hannah Haksgaard).

<sup>541</sup> E-mail from Patrick Goetzinger to Hannah Haksgaard (Dec. 2, 2017, 8:28 CST) (on file with Hannah Haksgaard).

<sup>542</sup> *Id.*; Bronner, *supra* 502 (profiling Fred Cozad). Fred Cozad died in August 2017.

<sup>543</sup> For one example, see Bill Coester’s explanation for his participation in Project Rural Practice. E-mail from Coester, *supra* note 517.

<sup>544</sup> Star Interview, *supra* note 517.

<sup>545</sup> *Id.*

<sup>546</sup> *Id.*

<sup>547</sup> Gilbertson Interview, *supra* note 539. The two counties providing courthouse space are Perkins County and Hawkin County. Star Interview, *supra* note 517. Bennett County will be providing the same for Amanda LaCroix. *Id.*

<sup>548</sup> See S.D. CODIFIED LAWS § 16-23-1 (West, Westlaw through laws of the 2018 Reg. Sess. effective March 21, 2018, and Supreme Court Rule 17-12) (allowing “rural counties and municipalities” to participate in the program).

<sup>549</sup> The information on number of registered lawyers comes from the State Bar of South Dakota Membership Directory current as of March 16, 2016. *For Bar Members*, STATE BAR OF SOUTH DAKOTA, <http://www.statebarofsouthdakota.com/page/members> [https://perma.cc/2N77-2B5F].

3,500, like Wall, to participate in the program, even when they are within high-population counties.<sup>550</sup> The South Dakota legislature passed HB 1053 in 2017, but as of this publication no attorneys have been placed under the new municipality provisions. A potential participant has been identified for Wall, however, and the city of Wall is interested in funding that lawyer.<sup>551</sup>

Although the Rural Attorney Recruitment Program is open to placing an attorney in Indian Country, none of the fifteen participants has been placed on a reservation.<sup>552</sup> Lawyers have been placed, however, in counties that include reservation lands and in non-reservation towns with substantial Native American populations.<sup>553</sup> Two barriers to placement in Indian Country are worth mentioning. The first is that South Dakota law requires the Rural Attorney Recruitment Program contract to be signed with a county commission or a municipality and does not contemplate direct negotiation with tribal government.<sup>554</sup> The multiple levels of government operating in Indian Country thus complicate the process.

The second barrier to participant placement in Indian Country is that Dakota Plains, the LSC-funded provider with a presence on South Dakota’s Indian Reservations, has a strong presence on every reservation.<sup>555</sup> This creates a perception that private-practice attorneys are not critical to the communities and, therefore, not worth funding.<sup>556</sup> While legal aid attorneys are available for some basic needs on South Dakota’s reservations, there is still a vital role to be played by private-practice attorneys in Indian Country.<sup>557</sup> In fact, because of its funding sources, Dakota Plains faces limitations on who it can serve, both in terms of the amount of resources it receives and how those resources may be used.<sup>558</sup>

### 3. *Role of Legal Education*

There is one law school in South Dakota, the University of South Dakota School of Law, which is located in Vermillion, a town in the southeast corner of the state with a population of 10,844.<sup>559</sup> For the 2017–2018 academic year, the full-time academic-year tuition and fee rates at USD Law are \$15,668.40 for South Dakota residents and \$33,744.40 for non-residents.<sup>560</sup> USD Law consistently ranks high on the Best Value Law Schools list.<sup>561</sup> USD Law averages fifty to seventy-five students per graduating class.<sup>562</sup>

<sup>550</sup> S.D. CODIFIED LAWS § 16-23-2.1 (West, Westlaw through laws of 2018 Reg. Sess. effective March 21, 2018, and Supreme Court Rule 17-12) (allowing participation for counties under 10,000); S.D. CODIFIED LAWS § 16-23-2.2 (West, Westlaw through laws of 2018 Reg. Sess. effective March 21, 2018, and Supreme Court Rule 17-12) (allowing participation for municipalities under 3500).

<sup>551</sup> Star Interview, *supra* note 517.

<sup>552</sup> Gilbertson Interview, *supra* note 539.

<sup>553</sup> For example, Amy Janssen is practicing in Kennebec, a small town in Lyman County. Lyman County is also home to the Lower Brule Indian Reservation, but Kennebec is not within the outer bounds of the reservation. Lucy Halverson, *Kennebec Has a New Attorney*, LYMAN COUNTY HERALD, June 21, 2017, <http://www.lcherald.com/news.php?extend.2220.10>. Amanda LaCroix, who has signed a contract and passed the February 2018 bar, will be practicing in Martin, a town in Bennett County. Bennett County includes reservation land, but Martin itself is not part of a reservation. Martin is approximately 42% Caucasian and 48% Native American and is located between the Pine Ridge and Rosebud reservations. *Bennett County Commissioners Proceedings 3-18-15*, BENNETT COUNTY BOOSTER II, April 1, 2015, <http://bennettcountyboostersd.com/legals/1712-bennett-county-commissioners-proceedings-3-18-15>. Martin was also home to Fred Cozad, a long-time attorney who played an important role in establishing Project Rural Practice. See Bronner, *supra* note 502.

<sup>554</sup> See S.D. Codified Laws § 16-23-7 (allowing “[a]ny rural county or municipality” to contract and appropriate funds for the Rural Attorney Assistance Program, but not contemplating tribal governments to do the same).

<sup>555</sup> See generally DAKOTA PLAINS LEGAL SERVICES, <https://www.dpls.org/> (last visited Nov. 17, 2017).

<sup>556</sup> Michaels Interview, *supra* note 494.

<sup>557</sup> *Id.*

<sup>558</sup> *Id.*

<sup>559</sup> See generally UNIVERSITY OF SOUTH DAKOTA: USD SCHOOL OF LAW, <http://www.usd.edu/law> [<https://perma.cc/4NP2-A52H>]; Vermillion, South Dakota, U.S. CENSUS BUREAU, [https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml?src=bkmk](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk) [<https://perma.cc/7W64-6KYG>], (including the 2016 population estimate).

<sup>560</sup> *Tuition and Fees*, UNIVERSITY OF SOUTH DAKOTA: USD SCHOOL OF LAW, <http://www.usd.edu/law/tuition-and-fees> [<https://perma.cc/K4S8-PK8X>]. A special rate of \$23,451.20 applies to Minnesota residents.

<sup>561</sup> Stetz, *supra* note 288 (ranking USD Law sixth in 2017).

In recent years, USD Law has matriculated about 65 percent South Dakota residents and has placed about 60 percent of its graduating classes into jobs in South Dakota.<sup>563</sup>

USD Law has supported Project Rural Practice from the beginning. In addition to funneling students into the Rural Attorney Recruitment Program, USD Law encourages its students to pursue rural legal practice in other ways. Every year during 1L orientation week, Chief Justice Gilbertson speaks to the incoming students and promotes rural practice.<sup>564</sup> Notably, a new program was started by Project Rural Practice in the summer of 2017 to place first- and second-year law students in summer jobs at rural law firms.<sup>565</sup> Using a \$25,000 grant to partially fund summer internships in rural counties, the career office at USD Law works to connect law students and small-town practitioners with the goal of exposing students to rural practice and connecting them with the rural legal community.<sup>566</sup> The intern must be paid, but in an attempt to get more rural practitioners involved, the Project Rural Practice grant will reimburse the practitioner for up to half of the wages paid.<sup>567</sup> During summer 2017, which was the program’s first year, four law students participated.<sup>568</sup> Two of those students have now committed to entering the Rural Attorney Recruitment Program, buoyed by their summers in rural placements.<sup>569</sup> The program will operate again in summer 2018.<sup>570</sup>

Other states, including the neighboring states of Nebraska and North Dakota, have focused their efforts on exposing law students to rural legal practice through educational tours or summer internships.<sup>571</sup> Neither state, however, has yet developed the infrastructure to support new lawyers after graduation.<sup>572</sup> Project Rural Practice has been successful in its first five years, and it appears the new summer internship program will be effective in further promoting the program.

#### 4. Conclusion

Despite the apparent early success of the Rural Attorney Recruitment Program, questions remain about its long-term efficacy. The incentive payments continue for five years, meaning the first

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<sup>562</sup> Interview by Hannah Haksgaard with Liz Taggart, Director of Law Sch. Admissions, Univ. of South Dakota School of Law, in Vermillion, S.D. (Dec. 4, 2017).

<sup>563</sup> *Id.*

<sup>564</sup> Gilbertson, *supra* note 472, at 441.

<sup>565</sup> Interview by Hannah Haksgaard with Devra Hermosilla, Director of Career Services at the University of South Dakota School of Law, in Vermillion, S.D. (Nov. 14, 2017).

<sup>566</sup> *Id.* Although the director of career services at USD Law manages the program, the program is available to first- and second-year students from other law schools who attended high school or college in South Dakota. *Id.*

<sup>567</sup> *Id.*

<sup>568</sup> *Id.*

<sup>569</sup> *Id.*

<sup>570</sup> *Id.*

<sup>571</sup> See *supra* Section I.C.3, Policy Efforts to Confront Justice Challenges Across the Northland (discussing a similar bus tour program, the Greater Wisconsin Initiative Bus tour) and see *supra* Section I.A.4, The Role of Legal Education (discussing a similar bus tour program in California, One Justice’s Justice Bus).

<sup>572</sup> Nebraska has several initiatives to promote rural practice. Nebraska conducts a bus tour every spring break where it takes law students and new attorneys around rural Nebraska to meet judges and practitioners. *Rural Practice Initiative (RPI)*, NEB. STATE BAR ASS’N, <http://www.nebar.com/page/RPI> [<https://perma.cc/A5CM-5W74>]. Nebraska also boasts the Rural Law Opportunities Program, which provides funds for law students to intern in rural areas. *Id.* Finally, Nebraska provides scholarships for high school students from rural communities to attend college with automatic entrance to the Nebraska College of Law, with the expectation that those students will graduate and practice law in rural communities. See, e.g., Karen Sloan, *How to Lure Lawyers to Small Town USA? Start There*, LAW.COM (Nov. 1, 2016), <https://www.law.com/sites/almstaff/2016/11/01/how-to-lure-lawyers-to-small-town-usa-start-there/?slreturn=20171017072523> [<https://perma.cc/H3F6-QDLW>]; Lorelei Laird, *University of Nebraska launches program encouraging more attorneys in state’s rural areas*, ABA JOURNAL, Oct. 27, 2016, [http://www.abajournal.com/news/article/university\\_of\\_nebraska\\_launches\\_program\\_encouraging\\_more\\_attorneys\\_in\\_rural](http://www.abajournal.com/news/article/university_of_nebraska_launches_program_encouraging_more_attorneys_in_rural). North Dakota has also dedicated some funds to incentivizing rural practice, but has only done so with law students, not graduates. In 2014 a funded summer internship program began where the state judiciary pays for up to three law students to spend the summer interning with a state judge in a rural area. Rand, *supra* note 468, at 1030–31. Additional private funding has since allowed for an expansion of the paid summer internship program to students working outside the judicial system and for scholarships designated for students from, or intending to practice in, North Dakota. *Id.* at 1032.

participants will soon be losing this source of income. It remains to be seen if there will be attrition once incentive payments stop, but all indications are that participants’ practices are doing well financially. This is not to say that the rural lawyer shortage has been solved in South Dakota: large areas with too few or no lawyers remain. As discussed, Indian Country poses a particular challenge.<sup>573</sup> This is partly a consequence of the Rural Attorney Recruitment Program’s failure to contemplate direct negotiation with tribal governments.<sup>574</sup>

In its first five years, the success of Project Rural Practice and the Rural Attorney Recruitment Program has been outstanding. As a result of the program, fifteen new attorneys are currently practicing in some of South Dakota’s most rural areas and, based on the number of contracts signed, that number will soon reach nineteen attorneys, with more in the pipeline.<sup>575</sup> Student interest in the Rural Attorney Recruitment Program remains high at USD Law. Project Rural Practice hosts a fall summit each year at USD Law, which serves as a yearly update, as well as a recruiting tool. At the 2017 fall summit, thirteen students attended the recruitment meeting, expressing an interest in joining the program after graduation.<sup>576</sup> There is no indication that the state bar, the state legislature, USD Law, the rural municipalities and counties of the state, or prospective rural lawyers are losing interest in Project Rural Practice. In fact, the coordinators of the program are already contemplating whether to seek additional funding for more placements. Chief Justice Gilbertson believes Project Rural Practice may well expand past thirty-two attorneys and that “the limits of the program are only hemmed in by our lack of creativity.”<sup>577</sup>

## II. THEMES AMONG STATES SURVEYED

In the states we surveyed and, indeed, across the United States, rural Americans’ legal needs are growing,<sup>578</sup> even as the number of rural lawyers is shrinking. As a result, despite variations in geography, economies, politics, and demographics, the deck seems consistently stacked against rural residents’ ability to access justice. In the face of these troubling trends, states are experimenting with various policy interventions to rectify the precarious imbalance.<sup>579</sup> In this Part, we highlight a number of themes which emerge from the state surveys. These include lagging legal aid funding in rural communities; the relationship between race and poverty; rural attorney shortages which are partly a consequence of the attrition of aging rural attorneys and the shortage of new attorneys willing to take their places and measures states have taken to offset attrition. Apart from the rural attorney shortage, we discuss common barriers to rural access to justice and policy maker responses. We close with some thoughts on the political landscape in the surveyed states.

<sup>573</sup> See *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice (noting no participants have been placed in Indian Country and the difficulties of potential placement).

<sup>574</sup> See S.D. CODIFIED LAWS § 16-23-7 (West, Westlaw through laws of 2018 Reg. Sess. effective March 21, 2018, and Supreme Court Rule 17-12) (allowing “[a]ny rural county or municipality” to contract and appropriate funds for the Rural Attorney Assistance Program, but not contemplating that tribal governments will do the same).

<sup>575</sup> Gilbertson Interview, *supra* note 472.

<sup>576</sup> The Project Rural Practice Fall Summit has led directly to at least one placement. Bill Coester, looking for an associate for his practice, attended the Fall Summit at USD Law several years ago and was then contacted by a prospective participant who is now an associate at Coester’s law firm. E-mail from Coester, *supra* note 517.

<sup>577</sup> Gilbertson Interview, *supra* note 472.

<sup>578</sup> Just two reasons for this growth, among low-income clients in particular, are the increasingly complicated requirements for securing public benefits under the Trump administration and the burgeoning problem of rural homelessness, which is closely related to the need for eviction defense. See Lisa R. Pruitt and Rebecca H. Williams, *Safety-Net Work Requirements as a Mismatch for Rural America*, in POVERTY STATES (Ezra Rosser, ed., forthcoming 2019 Cambridge University Press); SONYA SALAMON AND KATHERINE MAC TAVISH, SINGLEWIDE: CHASING THE AMERICAN DREAM IN A RURAL TRAILER PARK 237, 250-258 (2017).

<sup>579</sup> See, e.g., Christopher Chavis, *Maine sees its attorney shortage and sets out to fix it*, LEGAL RURALISM (Nov. 19, 2017, 9:15 AM), <http://legalruralism.blogspot.com/2017/11/maine-sees-its-rural-lawyer-shortage.html> [<https://perma.cc/E7RY-T3XR>]; Grant Gerlock, *Lawyer Shortage In Some Rural Areas Reaches Epic Proportions*, NATIONAL PUBLIC RADIO (Dec. 26, 2016, 5:00 AM), <http://npr.org/2016/12/26/506971630/nebraska-and-other-states-combat-rural-lawyer-shortage> [<https://perma.cc/R6SM-77DA>].

### A. *Lagging Legal Aid Funding*

Rural areas share similarities with urban and suburban areas in that legal aid providers everywhere struggle to meet legal needs with inadequate resources. Despite evidence that dollars spent on legal aid yield a considerable return on investment,<sup>580</sup> across-the-board scarcity of legal aid resources persists and, indeed, legal aid funds are dwindling in many states. In Maine, where state legal aid dollars are tied to revenue from civil filing fees and lawyers’ trust accounts, the state saw a 29% drop in funding between 2008 and 2013.<sup>581</sup> No Wisconsin tax dollars are currently directed to legal aid, meaning that the state’s two non-profit civil legal aid providers must now rely more heavily on funding from LSC, which has also seen its funding per poor person drop precipitously in recent years.<sup>582</sup> In South Dakota, a lack of direct state funding leaves the two legal aid providers heavily reliant on LSC funding.<sup>583</sup> And, of course, President Trump has recently proposed eliminating LSC funding entirely.<sup>584</sup>

Rural residents often bear the brunt of the funding cuts. Disproportionately high rural poverty rates suggest that rural areas should receive greater amounts of available legal aid funding, but we did not find that to be the case.<sup>585</sup> In California, for example, legal aid organizations that serve low-income rural Californians receive less than a third of the per person funding that flows to organizations serving urban populations.<sup>586</sup> Wisconsin’s funding mechanisms also do not consider the challenges associated with the delivery of services to spatially dispersed populations.<sup>587</sup>

It is possible that rural-urban funding disparities are even more widespread than the California and Wisconsin data suggest. A lack of complete and publicly available data on legal aid spending per person undermines our ability to compare—on an apples-to-apples basis—this trend across the states. Many legal aid organizations are reluctant to divulge too much information about their funding sources because they compete with other providers for scarce resources. Despite these data gaps, a national empirical study has established that public interest law organizations “are geographically distributed in ways that disadvantage rural and poor communities.”<sup>588</sup>

The importance of funding legal aid adequately and appropriately, including consideration of the particular challenges of proffering legal services in rural areas, cannot be overstated. We should also acknowledge, however, that even if legal aid funding were plentiful, legal services organizations could not meet the needs of every rural resident, or even the needs of every poor rural resident. In addition to the institutional limitations all LSC-funded organizations face, rural legal aid organizations are also hampered by the conflicts of interest inherent in rural legal practice. If only one legal aid provider is

<sup>580</sup> See ABA JOURNAL, *supra* note [ ] (“More than 30 cost-benefit studies all show that legal aid delivers far more in benefits than it costs”).

<sup>581</sup> See *supra* Maine’s Legal Needs and Resource Shortfalls (discussing funding for legal aid providers in Maine).

<sup>582</sup> See ABA JOURNAL, *supra* note [ ]; see also *supra* Section I.C.1.a, Northern Wisconsin (discussing funding for Wisconsin’s two civil legal aid providers).

<sup>583</sup> See *supra* Section I.E.1, Institutional Framework and South Dakota’s Legal Needs (discussing funding for South Dakota’s two civil legal aid providers).

<sup>584</sup> Debra Cassens Weiss, *Trump budget eliminates Legal Services Corporation funding*, ABA JOURNAL (Mar. 16, 2017), [http://www.abajournal.com/news/article/trump\\_budget\\_eliminating\\_funding\\_for\\_legal\\_services\\_corp/](http://www.abajournal.com/news/article/trump_budget_eliminating_funding_for_legal_services_corp/). [hereinafter Weiss, *Trump budget*]

<sup>585</sup> Pruitt & Showman, *supra* note 18, at 496 (“Because rural populations are disproportionately poor and because lawyers (legal aid attorneys or otherwise) are scarce in rural areas, we can surmise that rural residents—especially those who are low-income—are less likely than their urban counterparts to have their legal needs met.”).]

<sup>586</sup> See *supra* Section I.E.1, Institutional Framework and Political Landscape (noting \$18.56 per poor resident in rural counties compared to \$44.43 per poor resident in urban counties).

<sup>587</sup> See *supra* Section I.C.1.a, Northern Wisconsin (explaining the limitations faced by Judicare, Wisconsin’s sole rural legal aid provider).

<sup>588</sup> Catherine Albiston, Su Li, and Laura Beth Nielsen, *Public Interest Law Organizations and the Two-Tier System of Access to Justice in the United States*, 42 LAW & SOCIAL INQUIRY 990, 992 (2017).

present in a county, only one side of a dispute between otherwise eligible residents will be able to obtain services.<sup>589</sup>

Further, LSC funding comes with restrictions on the types of cases and clients for which the money can be used.<sup>590</sup> Among other restrictions, LSC prohibits recipients of its funding from engaging in certain types of legal matters altogether, even when the funds and lawyers used to engage in such work are compartmentalized from LSC funds.<sup>591</sup> For example, receipt of any LSC funding by a legal aid organization means that the organization cannot perform some types of immigration work.<sup>592</sup> For states like California, where rural regions often include significant immigrant populations, such restrictions severely limit the local legal needs to which LSC-funded organizations can respond.<sup>593</sup>

### B. Race and Poverty

Perhaps contrary to popular perception, many rural areas of the states we surveyed are racially and ethnically diverse. For instance, almost 40% of California’s overall population identifies as Latinx, including nearly that great a percentage of its rural population.<sup>594</sup> Californians are well aware of the Latinx population in the Central Valley, but they are nevertheless hard to reach, especially outside urban clusters like Modesto, Fresno, and Bakersfield, county seats that anchor vast agriculture-intensive counties with enormous legal needs.<sup>595</sup> Georgia’s rural and small-town African-American population is more than three times the national average.<sup>596</sup> Nine percent of South Dakotans are Native American, though they are heavily clustered on nine rural reservations.<sup>597</sup> Significant Hmong, Latinx, and Native American populations reside in the rural Northland of Wisconsin and Minnesota.<sup>598</sup> And Maine, despite being one of the whitest states in the nation,<sup>599</sup> also has many Native American residents; indeed, they comprise nearly half of the population in one county.<sup>600</sup> Each of these rural populations faces distinct barriers to access to justice, barriers which typically include the entrenched and intergenerational nature of poverty in their communities.

Indeed, the overlap between our nation’s poorest rural communities and racial disadvantage is well illustrated by the phenomenon of “persistent poverty,” a U.S. government designation for counties that have had high poverty rates (in excess of 20%) for the last 30 years.<sup>601</sup> Of 353 persistent poverty counties in the United States, 301 are nonmetro.<sup>602</sup> A quick glance at the persistent poverty map reveals that four races or ethnicities are overrepresented in certain persistent poverty regions: Native Americans in the west

<sup>589</sup> See Michaels Interview, *supra* note 494 (mentioning how Dakota Plains in South Dakota faces high numbers of conflicts) and Meierhenry, *supra* note 136 (discussing conflicts of interests for rural attorneys).

<sup>590</sup> See *infra* note [ ]. See also Albiston et al., *supra* note 588, at 1017 (advocating for elimination of constraints on LSC-funded organizations, specifically regarding law reform efforts).

<sup>591</sup> “LSC Restrictions and Other Funding Sources,” LEGAL SERVICES CORPORATION (last visited Apr. 21, 2018), <https://www.lsc.gov/lsc-restrictions-and-funding-sources>; “About Statutory Restrictions on LSC-Funded Programs,” LEGAL SERVICES CORPORATION (last visited Jan. 16, 2018), <https://www.lsc.gov/about-statutory-restrictions-lsc-funded-programs>.

<sup>592</sup> *Id.*

<sup>593</sup> See *supra* Section I.A, California (describing California as a “gateway” state for immigration and noting 36.4% of California’s rural and small-town population was Latinx in 2010).

<sup>594</sup> See *supra* Section I.A, California.

<sup>595</sup> See *supra* Section I.A.2, Where California Attorneys Are—and Are Not (describing the population distribution in California).

<sup>596</sup> See *supra* Section I.B.1, Institutional Framework and Resource Allocation (noting Georgia’s rural and small-town population is 25.8% African-America, while the national average is 8.4%).

<sup>597</sup> See *supra* Section I.E.1, Institutional Framework and South Dakota’s Legal Needs (reciting demographics of South Dakota).

<sup>598</sup> See *supra* Section I.C, Northeastern Minnesota and Northern Wisconsin (noting racial diversity of Northeastern Minnesota and Northern Wisconsin).

<sup>599</sup> See *supra* Section I.D.1, Institutional Framework and Political Landscape (noting Maine is one of the oldest and whitest states).

<sup>600</sup> *Id.* (noting high Native American populations in Washington and Aroostook Counties).

<sup>601</sup> *Geography of Poverty*, USDA ECONOMIC RESEARCH SERVICE: RURAL ECONOMY AND POPULATION (Apr. 9, 2018), <https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx> [<https://perma.cc/N847-9UVR>].

<sup>602</sup> See *id.* Nearly 84% of persistent poverty counties are in the South. However, the small size of southern counties puts this in context.

and southwest, Latinx populations in the Rio Grande Valley, African Americans in the Mississippi Delta and Black Belt, and Whites in Appalachia and the Ozark highlands.<sup>603</sup> The highest poverty rates, however—those spiking to 30% and greater—are typically found in the first three of those regions, those home to racial and ethnic minorities.

The relative invisibility of rural ethnic and racial minorities within our nation’s collective consciousness, however, means these communities’ particular vulnerability and needs are often overlooked.<sup>604</sup> Some consequences of this invisibility can be seen in the findings of our state surveys. For instance, South Dakota’s Native American population suffers from a particularly dire shortage of lawyers; the only South Dakota county without a lawyer is part of the Standing Rock Sioux Reservation.<sup>605</sup> Moreover, none of the fifteen participants in the state’s Rural Attorney Recruitment Program has been placed on a reservation, partly because contracts cannot be signed with tribal governments. Likewise, one in four residents of Echols County, Georgia, does not speak English at home; thus a language barrier aggravates access challenges in a county that already lacks a single practicing attorney.<sup>606</sup> In northern Minnesota and Wisconsin, the landscape of legal advocacy includes prominent Hmong communities but very few Hmong attorneys,<sup>607</sup> tribal communities with vastly different natural and socioeconomic resources and court capacities, and East African and Latinx populations who often experience profound legal and employment precarity but who may not qualify for legal assistance owing to immigration status and LSC requirements.<sup>608</sup>

### C. Rural Attorney Shortages

While legal services organizations do critically important work for qualifying clients and matters, the rural access to justice crisis extends beyond an assessment of the adequacy (or lack thereof) of legal aid and to a shortage of rural lawyers more broadly. Rural northern Wisconsin suffers attorney-to-resident ratios as poor as 1:4,452.<sup>609</sup> Courts in rural Wisconsin face a backlog of cases because there are too few (and over-burdened)<sup>610</sup> local lawyers, but also because attorneys from other areas are unwilling to accept low pay and mileage reimbursements to represent clients there.<sup>611</sup> In California, the ratio of attorneys to poor residents is roughly four times higher in its rural areas than in urban ones.<sup>612</sup> Similarly, over half of South Dakotans reside in the state’s rural areas, but only a small fraction of the state’s 1,800 active attorneys live and work there.<sup>613</sup> And in Georgia, the 154 counties outside of the five-county metropolitan Atlanta area are home to sixty-five percent of the state’s population, but only thirty percent of its attorneys.<sup>614</sup> Younger members of the Maine Bar live and work primarily in populous areas, mostly in

<sup>603</sup> *Id.*

<sup>604</sup> See Mara Casey Ticken, *There’s a Big Part of Rural America that Everyone’s Ignoring*, WASH. POST (Mar. 24, 2017), [https://www.washingtonpost.com/opinions/theres-a-big-part-of-rural-america-that-everyones-ignoring/2017/03/24/d06d24d0-1010-11e7-ab07-07d9f521f6b5\\_story.html?utm\\_term=.99d0f48fdb44](https://www.washingtonpost.com/opinions/theres-a-big-part-of-rural-america-that-everyones-ignoring/2017/03/24/d06d24d0-1010-11e7-ab07-07d9f521f6b5_story.html?utm_term=.99d0f48fdb44) [https://perma.cc/7MJL-JPRS]; HOUSING ASSISTANCE COUNCIL, *supra* note 60.

<sup>605</sup> *Directory*, *supra* note 479.

<sup>606</sup> U.S. DEPARTMENT OF AGRICULTURE, NATIONAL AGRICULTURAL STATISTICS SERVICE, *supra* note 606.

<sup>607</sup> As of April, 2018 Pahoua Thao is one of the few, if not the only, Hmong or Hmong-American attorney in beca. <http://www.zkklaw.com/Attorneys/Pahoua-Thao.shtml>. Milwaukee County Circuit Judge, Kashoua Yang, is the first Hmong-American judge in the state. See Lakshmi Gandhi, *Attorney Kristy Yang Hopes to Become Wisconsin’s First Hmong-American Judge*, NBC News, March 13, 2017..

<sup>608</sup> See *supra* note [ ]; see also Eric Lindquist, *Caught in confusion: Somalis in Barron wait, wonder in wake of Trump immigration order*, LEADER TELEGRAM, April 19, 2018. <http://www.leadertelegram.com/News/Front-Page/2017/02/05/CAUGHT-IN-CONFUSION.html>; Alexandra Hall, *Under Trump, Wisconsin dairies struggle to keep immigrant workers*, WisconsinWatch.org, March 19, 2017, <https://www.wisconsinwatch.org/2017/03/under-trump-wisconsin-dairies-struggle-to-keep-immigrant-workers/>.

<sup>609</sup> Molvig, *supra* note 347.

<sup>610</sup> See Table 2.

<sup>611</sup> See Coutu, *supra* note 353.

<sup>612</sup> See Meeker Data, *supra* note 97 and Table 9.

<sup>613</sup> See Table 2.

<sup>614</sup> See *id.*



the southern part of the state.<sup>615</sup> We have reason to believe that these states are typical—that attorney shortages are endemic to rural areas across the country.<sup>616</sup> Without enough lawyers, the legal needs of residents—whatever their income, demographics, or legal issues—cannot be met.<sup>617</sup>

Unfortunately, the realities associated with the abysmal attorney-to-resident ratios may be worse than our data suggest. As was the caveat to the California data, the numbers do not necessarily indicate how many attorneys are available to represent clients, as even “active” status attorneys in any given location may not be in private practice or have expertise in a particular field of law (or at all).<sup>618</sup> The vignette of Gregory County, South Dakota illustrates this problem: although the county has seven “active” resident attorneys, none are typically available for court-appointed cases.<sup>619</sup> Similarly, Sierra County, California’s five lawyers include only one available to represent private clients.<sup>620</sup> Conflicts of interest, which increase in frequency as the local lawyer population decreases, aggravate the strain.

Many counties with too few attorneys are contiguous to others with the same deficit, so that engaging an attorney in a neighboring county may also prove difficult, even for those who can afford to travel.<sup>621</sup> Moreover, a lack of attorneys in counties bordering another state may thwart the efforts of residents to find legal counsel because the nearest attorney is located and licensed only in the neighboring state.<sup>622</sup> Though lawyer shortages are the most obvious barrier to rural access to justice, Minnesota has identified a shortage of another lynchpin in the justice equation—judges.<sup>623</sup> National media have reported on the related issue of courthouse closures in California and Mississippi.<sup>624</sup>

### 1. *Rural Lawyer Attrition and the Lack of Replacements*

Our state surveys indicate that the primary reason for dwindling attorney numbers in rural areas is that lawyers there are aging and retiring, and too few new lawyers are stepping forward to take their place.<sup>625</sup> The national median age of attorneys increased by ten years between 1980 and 2005,<sup>626</sup> but the trend is more acute among rural attorneys, as our surveys of Georgia, Wisconsin, and Minnesota confirm.<sup>627</sup> Maine does not have rural-specific data on the age of its attorneys, though we know that the highest percentage of Maine attorneys, age-wise, fall within 10 years of the traditional retirement age of 65 and that new lawyers tend to be concentrated in the metropolitan areas of Southern Maine.<sup>628</sup>

<sup>615</sup> See *Maine Civil Legal Services Fund Commission Reports*, *supra* note 428.

<sup>616</sup> See Christopher Chavis, *Quantifying the rural lawyer shortage—a summary and progress report* LEGAL RURALISM (Nov. 18, 2017), <http://legalruralism.blogspot.com/2017/11/quantifying-rural-lawyer-shortage.html> [<https://perma.cc/E7RY-T3XR>].

<sup>617</sup> THE JUSTICE GAP, *supra* note 9, at 9, 13-14, 40-44 (“Low-income Americans will receive insufficient or no legal help for an estimated 1.1 million eligible problems this year alone... A lack of available resources accounts for the vast majority of eligible civil legal problems that go unserved or underserved.”)

<sup>618</sup> See *supra* Section I.A.2, Where California Attorneys Are—and Are Not (referring to California rural attorney statistics); see *supra* Section I.E.1, Institutional Framework and South Dakota’s Legal Needs (referring to South Dakota rural attorney statistics).

<sup>619</sup> See *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice (discussing Gregory County’s attorney shortage).

<sup>620</sup> See *supra* Section I.A.2, Where California Attorneys Are—and Are Not (discussing Sierra County’s attorney shortage).

<sup>621</sup> See *supra* notes [ ] and accompanying text; see also Pruitt et al., *Justice in the Hinterlands*, *supra* note 29, at 589.

<sup>622</sup> For example, four of the five Georgia counties without active attorneys are located in the Southwest corner of the state, bordering Alabama. See *supra* Section I.B.2, Community Legal Needs and Resource Shortfalls. The same issue arises in eastern California, where the nearest lawyer may be in neighboring Nevada. See *supra* Section I.A.2, Where California Attorneys Are—and Are Not.

<sup>623</sup> See *supra* Section I.C.1.b, Northeastern Minnesota (noting judge shortage in rural Minnesota).

<sup>624</sup> See Emily Green, *With Budgets Tight, Small Towns Go Without Courthouses*, NATIONAL PUBLIC RADIO (Aug. 6, 2013), <https://www.npr.org/2013/08/06/206948225/with-budgets-tight-small-towns-go-without-courthouses> (discussing a courthouse closure in Fresno County, California).

<sup>625</sup> See Pruitt et al., *Justice in the Hinterlands*, *supra* note 29, at 596-599.

<sup>626</sup> Aging Lawyers Task Force Presentation, *supra* note 282.

<sup>627</sup> Data in Arkansas show that rural attorneys in that state also tend to be older than the state average. See Pruitt et al., *Justice in the Hinterlands*, *supra* note 29, at 602.

<sup>628</sup> See *supra* Section I.D.2, Maine’s Legal Needs and Resource Shortfalls (discussing Maine’s greying bar).

Moreover, the state is perennially ranked as one of the oldest states in the country,<sup>629</sup> with slight gains in population due primarily to an influx of immigrants and refugees.<sup>630</sup> Although “greying of the bar” data were not available for California and South Dakota, anecdotal evidence suggests that rural attorneys in those states are also older than state averages.<sup>631</sup>

In California, young lawyers’ decisions not to pursue rural practice may be attributed at least in part to the high cost of a legal education and resultant student debt.<sup>632</sup> If metropolitan salaries for California attorneys significantly outpace those of their rural counterparts—and most assume that they do<sup>633</sup>—student loan debt is an economic deterrent to rural practice. This fact likely holds true for law school graduates in other states, too.<sup>634</sup> Recall that lawyer survey respondents in Maine cited too low-income as a reason to forego rural practice,<sup>635</sup> despite Maine Law’s tuition being less than half of that paid by the typical graduate of an ABA-AALS-Accredited law school in California.<sup>636</sup> Similar concerns surfaced in a 2014-15 survey of Arkansas lawyers and law students,<sup>637</sup> as well as in a closed-door discussion between South Dakota’s Chief Justice and a group of USD law students.<sup>638</sup>

Yet respondents are presumably merely speculating about low salaries because little evidence is available. Indeed, the data from the one state for which we did find salary information—Texas—indicate that in many specialties and in general practice, rural attorneys’ earnings outpace those of their urban counterparts.<sup>639</sup> Data like these need to be more widely shared, and more data tracking salaries along the rural-urban continuum should be gathered to explore the validity of the presumption that rural markets are consistently synonymous with lower remuneration.

While federal income-based student loan repayment has alleviated some concerns regarding income, law schools’ loan repayment assistance programs (LRAPs) could also play a greater role. LRAPs rarely

<sup>629</sup> See *supra* Section I.D.1, Institutional Framework and Political Landscape (noting that Maine ranks “annually among the oldest and whitest states in the nation”).

<sup>630</sup> See *id.* (noting Maine’s net population growth is reliant on its foreign-born population).

<sup>631</sup> See *supra* [ ]. Ingrid Larsson, *supra* note 131 (showing the year of admission of the only lawyer in private practice in Sierra County, California); Bronner, *supra* note 502 (profiling elderly attorney Fred Cozad, who has since died).

<sup>632</sup> See *supra* Section I.D.3, Policy Efforts to Confront Justice Challenges: Reflecting on Maine’s History of Leadership in Championing Access to Justice (“When respondents were asked what influenced their decision not to pursue rural practice, the most selected reason was “lack of professional opportunities for partner,” with “income too low” a very close second.”); Drisko Zago, *supra* note 19, at 36 (“Law school debt is a huge burden to new graduates and is a significant barrier to starting rural practices.”).

<sup>633</sup> See *supra* Section I.A.4, The Role of Legal Education (discussing why California’s law students may be unwilling to practice in rural areas).

<sup>634</sup> But see Lindsay Stafford Mader, *Way Out Yonder*, 78 TEX. BAR J. 524, 526 (2015) (finding the median salary for rural attorneys in Texas exceeded the median salaries for Austin, Dallas, Houston, and San Antonio).

<sup>635</sup> See *supra* Section I.D.3, Policy Efforts to Confront Justice Challenges: Reflecting on Maine’s History of Leadership in Championing Access to Justice (noting survey showed “income too low” and “lack of professional opportunities for partner” as the two most-identified barriers).

<sup>636</sup> Compare *Tuition and Fees*, MAINE LAW, <https://mainelaw.maine.edu/admissions/financing-your-education/tuition-and-fees/> (last accessed June 1, 2018) (explaining that Maine resident tuition for the 2017-2018 school year is \$22,290 plus other assorted fees) with *What Are the Priciest Law Schools?*, *supra* note 185 (explaining the average tuition and fees for California’s public law schools was \$46,453 in 2018).

<sup>637</sup> See Pruitt, et al., *Justice in the Hinterlands*, *supra* note 29, at 637 (reporting the reasons given by Arkansas lawyers and law students for choosing not to practice in a rural locale; of 128 UA Fayetteville students answering “yes”, “no”, or “don’t know” to the question of whether they planned to practice in a Rural County, 60% ranked “perception that I would earn a lower income” and 52% ranked “perception that rural areas offer fewer career and economic opportunities” as top two most discouraging factors. *Id.* at 637. Among 221 respondents at the University of Arkansas Little Rock Bowen School of Law, the factors “most discouraging” of rural practice were “perception that I would earn a lower income; “perceived inability to find clients/perceived lack of career and economic opportunities”; and “relative lack of entertainment, restaurant and other similar amenities associated with cities.” *Id.* at 637. Cf. Wandler, *Supply and Demand*, *supra* note 18, at 250 (reporting student survey indicating 74% of students were open to practicing in a town with a population of 10,000 or less).

<sup>638</sup> Gilbertson, *supra* note 472, at 439 (noting that fifteen of sixteen students would consider rural practice, but students were most concerned with finances).

<sup>639</sup> But see Lindsay Stafford Mader, *Way Out Yonder*, 78 TEX. BAR J. 524, 526 (2015) (finding the median salary for rural attorneys in Texas outperformed the median salaries for Austin, Dallas, Houston, and San Antonio).

extend benefits to those entering private practice, even if that practice is in an underserved area.<sup>640</sup> Indeed, California’s 2015 Civil Justice Strategies Task Force Report and Recommendations advocated for expansion of LRAP programs to “include attorneys in small or solo practices focused on addressing the needs of low and modest means clients.”<sup>641</sup> Such programs could further entice law graduates into rural practice.

As a related matter, the primary reason cited by Maine lawyer survey respondents for deciding against solo legal practice—whether rural or urban—was “income instability.”<sup>642</sup> This concern may provide further insights into the success of the South Dakota program: Income subsidies such as those on offer there help smooth out the income gaps that are likely part and parcel of solo and small firm practice.

Concern about income instability, as articulated in the Maine survey, also hints at insecurity about one’s skills fresh out of law school. It suggests that a lack of preparedness for what rural and solo legal practices entail, and not merely the size of one’s income, is of concern to recent graduates considering next career moves. That, in turn, suggests a role for law schools to educate practice-ready lawyers with the small-business savvy to market their practices to a range of clients, including those of modest means.<sup>643</sup> That skill set is typically a focus of incubator programs. By way of example, Baylor Law School sponsors the Legal Mapmaker program, which is open to all Texas law school graduates.<sup>644</sup> Through a three-day seminar, Legal Mapmaker aims to prepare young lawyers to open their own firms by equipping them with the tools to practice efficiently as they provide affordable services.<sup>645</sup> Law schools could teach such skills to more would-be rural lawyers *during* law school, something a few are starting to experiment with.<sup>646</sup>

Other obstacles to rural practice that have been identified elsewhere include limited career opportunities for lawyers’ life partners,<sup>647</sup> perceived lack of amenities and basic services in rural communities,<sup>648</sup> lack of anonymity, negative attitudes towards rural people, and an expectation of rural bias towards minorities and women, to name a few.<sup>649</sup> Clearly, each of these obstacles must be addressed if new pathways to rural practice are to be forged and rural practice made attractive to young lawyers.

## 2. *Measures Taken to Offset Attrition*

Several states have responded to the rural lawyer shortage by attempting to increase the number of their law school graduates who enter rural legal practice. For example, the state of Wisconsin, following

<sup>640</sup> See *supra* note [ ]. Two prominent exceptions are Harvard Law School’s Low Income Protection Program, <https://hls.harvard.edu/dept/sfs/lipp/> (last visited Apr. 22, 2018) and Stanford Law School’s Loan Repayment Assistance Program (LRAP), <https://law.stanford.edu/wp-content/uploads/2015/03/LRAP-2018-Program-Terms-1.pdf> (last visited Apr. 24, 2018). Neither excludes private practice from eligibility requirements.

<sup>641</sup> STATE BAR OF CALIFORNIA, CIVIL JUSTICE STRATEGIES TASK FORCE REPORT AND RECOMMENDATIONS (2015) at 75 <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000013003.pdf> (last visited Apr. 24, 2018).

<sup>642</sup> See *supra* Section I.D.3, Policy Efforts to Confront Justice Challenges: Reflecting on Maine’s History of Leadership in Championing Access to Justice (noting survey showed “income too low” and “lack of professional opportunities for partner” as the two most-identified barriers).

<sup>643</sup> One such skill is marketing unbundled legal services. See *Unbundling and the Rural Client*, MYSHINGLE.COM, May 24, 2018, <https://myshingle.com/2018/05/articles/future-trends/unbundling-and-the-rural-client/>

<sup>644</sup> See Eric Quitugua, *Legal Mapmaker™ seminar aims to help young lawyers open firms*, TEXAS BAR BLOG (Aug. 8, 2017), <https://blog.texasbar.com/2017/08/articles/uncategorized/legal-mapmaker-seminar-aims-to-help-young-lawyers-open-firms/>.

<sup>645</sup> *Id.*

<sup>646</sup> See *supra* Section I.A.4, The Role of Legal Education (discussing the Practice 99 curriculum being developed by a trio of California law schools); *Professional Development Program*, BAYLOR LAW, <https://www.baylor.edu/law/currentstudents/index.php?id=933502> (last visited May, 8, 2018).

<sup>647</sup> See *supra* Section I.D.3, Policy Efforts to Confront Justice Challenges: Reflecting on Maine’s History of Leadership in Championing Access to Justice (noting survey showed “income too low” and “lack of professional opportunities for partner” as the two most-identified barriers); see also Pruitt et al., *Justice in the Hinterlands*, *supra* note 29, at 646.

<sup>648</sup> See, e.g., *supra* Section I.A.4, The Role of Legal Education (discussing reasons other than cost that California’s law students are not willing to move to rural areas); see also Pruitt et al., *Justice in the Hinterlands*, *supra* note 29, at 646.

<sup>649</sup> Recall that at least one female lawyer in rural Wisconsin felt discriminated against by judges. See *supra* Section I.C.1.a, Northern Wisconsin.

Nebraska’s lead, organized a bus tour to take law students and recent law school graduates to rural areas in order to familiarize them with rural practice opportunities.<sup>650</sup> The bus tour has been credited with improving Judicare’s recruitment efforts.<sup>651</sup> Similarly, several California law schools have participated in OneJustice’s Justice Bus, which takes students and attorneys into rural areas to staff short-term legal clinics.<sup>652</sup> While these efforts potentially whet students’ appetite for rural practice, law schools and other stakeholder institutions can do more—beyond visits limited in time and scope—to emphasize the ongoing needs in rural communities.

The Maine Law Rural Lawyer Project takes law student integration into rural practice a step further, pairing law students with practitioners in under-served rural communities with the hope that students will choose to practice there after graduation.<sup>653</sup> Similarly, a California summer fellowship supports students who are interested in a public interest career to work in a rural area or on a rural issue.<sup>654</sup> Project Rural Practice in South Dakota began a similar summer rural placement program in 2017,<sup>655</sup> and North Dakota funds summer internships for law students through the Rural Justice Program.<sup>656</sup> Georgia’s Succession Planning Pilot Program connects retiring solo practitioners with new law graduates to facilitate succession of the practice.<sup>657</sup> On the national level, Legal Services Corporation and Equal Justice Works offer Rural Summer Legal Corps, which places students with rural civil legal aid organizations across the country.<sup>658</sup>

That brings us to programs that create financial incentives for lawyers to engage in rural practice. In 2015, Georgia considered a program that would have offered loan repayment assistance to law school graduates who committed to working in that state’s rural reaches, but the legislative proposal was ultimately unsuccessful.<sup>659</sup> In January 2018, the Board of Trustees of the State Bar of California requested and heard data regarding the state’s rural attorney shortages, legal education costs, student debt, and loan repayment assistance programs. When the Board finalized its strategic plan two months later, however, it set no goals regarding rural issues.<sup>660</sup> North Dakota has also contemplated a loan-forgiveness program for rural attorneys, but no progress has been made.<sup>661</sup> The Maine legislature is considering an annual tax credit for a limited number of lawyers who choose to practice in that state’s rural areas.<sup>662</sup> Finally, a bill recently proposed in Wisconsin would provide student loan payments for lawyers who represent low-income, rural criminal defendants.<sup>663</sup>

<sup>650</sup> See *supra* Section I.C.3, Policy Efforts to Confront Justice Challenges Across the Northland (discussing Wisconsin’s bus tour).

<sup>651</sup> *Id.*; Green, *supra* note 380.

<sup>652</sup> *Justice Bus Project*, *supra* note 203.

<sup>653</sup> See *supra* Section I.D.4, The Role of the Law School: Contributing to Access-to-Justice Policy Efforts (discussing the Maine Law Rural Lawyer Project). See also *Rural Clerkship Program introducing law students to small towns like RAGBRAI stop Garner*, IOWA NOW, July 25, 2017 <https://now.uiowa.edu/2017/07/ragbrai-2017-day-three-garner-rural-clerkship-program>.

<sup>654</sup> See *supra* Section I.A.4, The Role of Legal Education (California – discussing the Dan Bradley Fellowship).

<sup>655</sup> See *supra* Section I.B.4, Role of Legal Education (Georgia – profiling the summer placement part of Project Rural Practice).

<sup>656</sup> Rand, *supra* note 468, at 1030.

<sup>657</sup> Note that this program is not limited to rural practitioners. See also *supra* Section I.B.2, Community Legal Needs and Resource Shortfalls. See also Martha Neil, *In a rural county that lacks lawyers, seemingly no one wants to buy a successful law practice*, ABA JOURNAL, Nov. 3, 2014,

[http://www.abajournal.com/news/article/in\\_a\\_rural\\_county\\_that\\_lacks\\_lawyers\\_no\\_one\\_seemingly\\_wants\\_to\\_buy\\_a\\_succes](http://www.abajournal.com/news/article/in_a_rural_county_that_lacks_lawyers_no_one_seemingly_wants_to_buy_a_succes).

<sup>658</sup> RURAL SUMMER LEGAL CORPS PROGRAM, <https://rurallegalcorps.org/> (last visited Aug. 21, 2017).

<sup>659</sup> See *supra* Section I.B.3, Policy Efforts to Confront Justice Challenges (discussing the 2015 failure of Ga. H.B. 236).

<sup>660</sup> See *supra* Section I.A.3, Policy Responses to Rural Justice Deficits (discussing the 2018 failure to include rural issues in the five access-to-justice objectives).

<sup>661</sup> Rand, *supra* note 468, at 1033 (“Possible future expansion of the Rural Justice Program is under discussion. Potential goals include . . . seeking state support for a loan forgiveness program modeled after South Dakota’s Rural Attorney Recruitment Program.”).

<sup>662</sup> See *supra* Section I.D.4, The Role of the Law School: Contributing to Access-to-Justice Policy Efforts (discussing the proposal and current legislative posture of LD 1680).

<sup>663</sup> See *supra* Section I.C.3, Policy Efforts to Confront Justice Challenges Across the Northland (discussing proposed law in Wisconsin).

Among the states surveyed, and, indeed, among all of the United States, South Dakota has undertaken the most comprehensive attempt to encourage law school graduates to take up rural practice. In short, various stakeholders—including the counties where lawyers are placed—have put their money where their mouth is. The state’s only law school consistently touts its support of—and the many opportunities for—rural practice, starting with a speech by the state’s Chief Justice, long-time champion of the initiative, at 1L orientation.<sup>664</sup> While this high-profile legitimization of rural practice should not be understated, it is South Dakota’s fiscal support of rural legal practice through the Rural Attorney Recruitment Program that most differentiates it from the rest of the country.<sup>665</sup> Indeed, the fact that South Dakota has succeeded in making rural practice attractive shows it can be done. Young lawyers—including some with no prior connection to the state—have responded to proffered financial and mentoring support, and we have reason to believe that rural areas of other states can be made equally attractive with financial incentives.

#### D. Other Barriers to Access

Our state surveys indicate that the shortage of practicing lawyers in rural areas is compounded by other barriers to access. Some rural residents do not have computers, reliable cell phone service or data access, or home access to the internet.<sup>666</sup> These deficits hinder residents’ ability to communicate with an attorney or to access other forms of legal assistance, including self-help websites. Lack of transportation is an additional barrier to legal assistance,<sup>667</sup> and immigrant communities may face language.<sup>668</sup> Indeed, illiteracy and health problems will also likely keep many low-income rural clients from accessing attorneys, in both the states we surveyed and beyond. Moreover, the fact that some states run decentralized court systems,<sup>669</sup> which can result in inconsistencies in court processes among neighboring courts, further impedes meaningful access.<sup>670</sup> With so many obstacles between themselves and legal services, rural residents may cease to recognize their legal rights. Those thwarted in efforts to engage the legal system may come to see the law as irrelevant to them, thus disconnecting vulnerable populations from justice, both cognitively and practically.<sup>671</sup>

#### E. Measures Taken to Increase Access

<sup>664</sup> See *supra* Section I.E.3, Role of Legal Education (noting the appearance of Chief Justice David Gilbertson every year for orientation).

<sup>665</sup> See *supra* Section I.E, South Dakota (noting the Rural Attorney Recruitment Program is unique in funding post-graduate rural legal jobs).

<sup>666</sup> See, e.g., Levitz & Bauerlein, *supra* note 27; Boon, *supra* note 27; and Inbody, *supra* note 27.

<sup>667</sup> See Lisa R. Pruitt & Marta Vanegas, *Urbanormativity, Spatial Privilege and Judicial Blind Spots in Abortion Law*, 30 BERKELEY J. OF GENDER, L., & JUST. 76, 105-112 (2015) (discussing Justice Souter’s dissent in *Crawford v. Marion Cty.*, 553 U.S. 181, 197 (2008), which recognized the relevance of lack of public transportation to the right to vote, a circumstance easily analogized to accessing justice systems and legal services.)

<sup>668</sup> See e.g., *supra* Section I.B.2, Community Legal Needs and Resource Shortfalls (profiling Echols County, Georgia, and the language barriers there).

<sup>669</sup> See *supra* Section I.B.1, Institutional Framework and Resource Allocation (Georgia) and Section I.C.1.1, Northern Wisconsin.

<sup>670</sup> See e.g., *supra* Section I.C.1.1, Northern Wisconsin (providing an example of how the court system in Northern Wisconsin impedes legal representation).

<sup>671</sup> See generally Lisa R. Pruitt, *The Rural Lawscape: Space Tames Law Tames Space*, in THE EXPANDING SPACES OF LAW: A TIMELY LEGAL GEOGRAPHY (Nicholas Blomley et al., eds., 2014) (theorizing the ways in which law as an ordering force and rural spatiality are in tension with each, arguing that material spatiality—sheer distance—thwarts the efforts of law, which in turn causes rural residents to see law as less relevant to their lives). We have no recent empirical studies of how attitudes toward law differ between rural and urban populations. Earlier, germinal studies include ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1994); David Engel, *The Oven Bird’s Song: Insiders, Outsiders and Personal Injuries in an American Community*, 18 LAW AND SOCIETY REV. 551(1984).

The states we surveyed employ various strategies to bridge the rural-urban justice gap.<sup>672</sup> These include direct client interaction via legal aid organizations, alternative dispute resolution programs,<sup>673</sup> online channels to lawyers such as the ABA’s Free Legal Answers website, and in-person clinics staffed by volunteer attorneys to assist pro se litigants. The types of offerings and the ways in which they are employed vary significantly from state to state. In addition, California, Georgia, and Minnesota run public law libraries,<sup>674</sup> as well as self-help websites and/or centers to serve those without a lawyer.<sup>675</sup> Law libraries, often at the county level, may be similar to the Northern Wisconsin Legal Advice Project in that a lawyer is typically on site to answer questions, but stops short of legal representation.<sup>676</sup> On the other hand, we have reason to believe that county law libraries and related self-help centers are less effective in rural counties than in urban ones, given the resource and personnel deficits associated with rural infrastructure.<sup>677</sup>

Nevertheless, some self-help centers are clearly meeting critical needs. The Family Law Information Center (FLIC) in Northern Georgia is a court-based program designed specifically for residents facing family law issues; it provides self-help resources for pro se litigants and one-time consultation appointments with volunteer attorneys.<sup>678</sup> In far northern California, an award-winning self-help program serves multiple counties by deploying video conferencing technology.<sup>679</sup> Likewise, self-help websites such as GeorgiaLegalAid.org<sup>680</sup> and LawHelpMN.org,<sup>681</sup> as well as the Wisconsin and Georgia Free Legal Answers websites,<sup>682</sup> provide forms and information without the direct assistance of a lawyer.

#### F. The Political Landscape

The states we surveyed run the political gamut from very blue California, the most urban and left-leaning among the states studied, to very red South Dakota, the most rural among our six states.<sup>683</sup> Of the remaining four states surveyed, only Minnesota has leaned blue in recent years. Yet what we see across

<sup>672</sup> Of course, many states that we did not survey have also undertaken rural access-to-justice initiatives. Where current and relevant, we have endeavored to cite to those initiatives herein. For a 2003 report regarding rural access to justice initiatives across the country at the time, see *Rural Pro Bono Delivery: A Guide to Pro Bono Legal Services in Rural Areas*, A.B.A. (2003), [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwj93963lqTbAhWvuVvKkHYAhDKQqFgg2MAE&url=https%3A%2F%2Fwww.americanbar.org%2Fcontent%2Fdam%2Faba%2Fimages%2Fprobo-no\\_public\\_service%2Fts%2Faba\\_rural\\_book.pdf&usg=AOvVaw3nHh3nHkrt\\_KHL2YekLBG3](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwj93963lqTbAhWvuVvKkHYAhDKQqFgg2MAE&url=https%3A%2F%2Fwww.americanbar.org%2Fcontent%2Fdam%2Faba%2Fimages%2Fprobo-no_public_service%2Fts%2Faba_rural_book.pdf&usg=AOvVaw3nHh3nHkrt_KHL2YekLBG3)

<sup>673</sup> See *supra* note [ ].

<sup>674</sup> CAL. CODE, BUS. & PROF. CODE § 6300 (West, Westlaw through Ch. 9 of 2018 Reg. Sess.) (“There is in each county of this State a board of law library trustees, which governs the law library established for the county under the provisions of this chapter.”); see also *supra* Policy Efforts to Confront Justice Challenges (discussing Georgia’s law libraries); see also *supra* Section I.C.1.b, Northeastern Minnesota (noting the existence of county law libraries in Minnesota).

<sup>675</sup> See e.g., *supra* Northeastern Minnesota (noting that the Minnesota Judicial Branch’s website contains forms).

<sup>676</sup> See *supra* Section I.C.1.b, Policy Efforts to Confront Justice Challenges Across the Northland (discussing Judicare’s Northern Wisconsin Legal Aid Advice Project).

<sup>677</sup> See *Self-Help Center*, *supra* note 137 (discussing opening hours of Sierra County, California Self-Help Center, which refers clients to neighboring Nevada County).

<sup>678</sup> See *supra* Section I.B.3, Policy Efforts to Confront Justice Challenges (discussing the function and success of FLIC).

<sup>679</sup> See *Family Law Facilitator for Lake County honored by state association*, *supra* note 153 (discussing SHARP initiative in Lake, Butte, and Tehama counties in California).

<sup>680</sup> GEORGIALEGALAID.ORG, *supra* note 281.

<sup>681</sup> LAWHELPMN.ORG, *supra* note 342.

<sup>682</sup> See *supra* Section I.C.3, Policy Efforts to Confront Justice Challenges Across the Northland (explaining Judicare’s Northern Wisconsin Legal Advice Project and its adoption by the state bar); see also *supra* Section I.B.3, Policy Efforts to Confront Justice Challenges (explaining a website providing legal services hosted by the American Bar Association’s Free Legal Answers program).

<sup>683</sup> See Robert Leonard, *Why Rural America Voted for Trump*, N.Y. TIMES (Jan. 5, 2017), <https://www.nytimes.com/2017/01/05/opinion/why-rural-america-voted-for-trump.html> [https://perma.cc/Q558-CRVW] (discussing the type of people who consider rural synonymous with republican and the reasons for that conflation); Reid Wilson, *How the GOP came to dominate, and be dominated by, rural voters*, THE HILL (Jun. 15, 2017, 6 AM), <http://thehill.com/homenews/campaign/337872-how-the-gop-came-to-dominate-and-be-dominated-by-rural-voters> [https://perma.cc/FZ3U-47K8]; Alan Greenblatt, *Why Rural America Is Increasingly Red*, GOVERNING (Jul. 2016), <http://www.governing.com/topics/politics/gov-rural-voters-governors-races.html> [https://perma.cc/SEB5-KWVJ].

these six geographically, demographically, and politically varied states is that rural populations generally have little political clout when it comes to advocating successfully for their own justice system needs.<sup>684</sup> Many initiatives to ameliorate the rural lawyer shortage and other rural justice system deficits—some with bipartisan support—have been proposed, but few have been funded and implemented.

That said, South Dakota has been the most responsive to rural needs. It is state whose institutions have best risen to the rural attorney shortage. This may be a reflection of the fact that nearly half of South Dakotans live in rural places.<sup>685</sup> Thus, even though a Republican administration might generally not see a role for state intervention in access-to-justice matters—note that the state provides no funding for legal aid, rural or urban<sup>686</sup>—rural constituencies do matter. Contrast that with California, where the Board of Trustees of the State Bar recently sought and heard detailed information about the rural attorney shortage but then chose not to set any goals regarding that shortage in its five-year strategic plan.<sup>687</sup> In spite of California’s greater tendency generally to see state intervention as appropriate to correct market deficits, it has not prioritized rural. This failure to act may reflect the fact that just 2% of California’s population lives in rural areas.<sup>688</sup>

### III. PROPOSING NEW APPROACHES

Our state surveys provide a sampling of varied and well-intentioned policies aimed to improve rural access to justice. Yet our analysis also reveals that such attempts have thus far fallen short of meeting the significant legal needs of rural Americans.<sup>689</sup> Where do we go from here? In the sub-parts that follow, we offer suggestions that implicate a range of stakeholders.

#### A. *Collect and Analyze More Data*

Gathering and analyzing data about the rural-urban justice gap are important starting points and should continue.<sup>690</sup> Implementing effective and efficient policies to achieve parity in access to legal services requires a clear understanding of where the lawyers are and are not, these lawyers’ expertise, and how many of them are in private practice, among other information. In contrast, the utility of some of the data we rely upon herein is limited by its generality. California’s Meeker data, for example, do not distinguish “active” attorneys from “inactive” ones.<sup>691</sup> Beyond the counting of active lawyers, it would be helpful to know the number of lawyers in any given jurisdiction who are actually available to represent clients, a factor which becomes increasingly relevant as the number of lawyers dwindles in a particular

<sup>684</sup> See *How Red or Blue is Your State?* THE HILL (Oct. 24, 2014), <http://thehill.com/blogs/ballot-box/house-races/221721-how-red-or-blue-is-your-state> [<https://perma.cc/WDB8-HCFE>]. Compare Thomas Fuller, *California’s Far North Deplores “Tyranny” of Urban Majority*, N.Y. TIMES (Jul. 2, 2017), <https://www.nytimes.com/2017/07/02/us/california-far-north-identity-conservative.html> [<https://perma.cc/9MJ9-HM6D>] (covering far northern California’s complaint that its needs are overlooked in the context of a blue, urban-centric state) with Mark Niesse, *Rural Georgia finally gets the Legislature’s attention*, ATLANTA J.-CONST. (Jan. 2, 2018, 7:30 AM), <http://www.myajc.com/news/state--regional-govt--politics/rural-georgia-finally-gets-the-legislature-attention/ovPb94ykoK7LnlcicDY9qO/> [<https://perma.cc/SM2Z-348Y>].

<sup>685</sup> Table 1.

<sup>686</sup> See *supra* Section I.E.1, Institutional Framework and South Dakota’s Legal Needs (reporting on the South Dakota’s lack of state funding for legal aid).

<sup>687</sup> See *supra* Section I.A.3, Policy Responses to Rural Justice Deficits (detailing the 5-year strategic plan adopted by the Board of Trustees at its March 2018 Meeting).

<sup>688</sup> Table 1.

<sup>689</sup> See Chavis, *supra* note [ ].

<sup>690</sup> See Elizabeth Chambliss, Renee N. Knake and Robert L. Nelson, *Introduction: What We Need to Know about the State of “Access to Justice” Research*, 67 S.C. L. REV. 193 (2016). For an Australian perspective on data collection, see Simon Rice, *Access to a Lawyer in Rural Australia: Thoughts on the Evidence we Need*, 16 DEAKIN L. REV. 13 (2011).

<sup>691</sup> Meeker E-mail, *supra* note 98.

locale.<sup>692</sup> Gregory County, South Dakota, and Sierra County, California, provide clear illustrations that having a small but seemingly critical mass of lawyers will not necessarily meet a community’s needs.<sup>693</sup>

Data must also be collected to identify region-specific legal and non-legal problems and priorities, as well as the extent to which there is overlap among the needs identified by different stakeholders (e.g., area leaders, policy makers, local attorneys, and low-income community members). We know little about how rural people access and interact with the legal system or about particular legal needs that are unrecognized as such or otherwise are going unaddressed.<sup>694</sup> This lack of understanding about rural legal needs and the responsiveness (or lack thereof) of available resources highlights the value of ethnographic research like that Michele Statz is conducting in the Northland of Minnesota and Wisconsin.

Consider also the findings from Georgia<sup>695</sup> and Maine,<sup>696</sup> where legal deserts correspond to broader rural population declines. What common initiatives might be undertaken to recruit multiple categories of professionals to a particular rural area, and what more comprehensive rural revitalization might be achieved as a result?<sup>697</sup> In just that vein, Georgia’s Rural Development Council has recommended legislative action to create incentives for rural living, especially for professional, high-wage earners.<sup>698</sup> How might rural access to justice advocates contribute to and benefit from broader rural development efforts like those articulated for Georgia? Further exploration of the connection between the provision of legal services and a community’s economic and social well-being could help convince policymakers that alleviating the rural lawyer shortage and achieving broader rural access goals will be critical to any successful rural revival.

Once data-driven rural access-to-justice initiatives are implemented, data collection must continue so that the efficacy of initiatives can be assessed, and modifications and new directions informed. For instance, South Dakota’s Rural Attorney Recruitment Program must be assessed as incentive payments to the first group of participants cease.<sup>699</sup> Will the attorneys choose to stay in the rural areas where they were placed beyond their initial five-year commitment? What are their reasons, at that juncture, for staying or leaving?

Though this program is only five years old, we already have useful data from participants. We know, for example, that law school graduates who attended law school outside South Dakota have used the program to return home to practice there.<sup>700</sup> Less predictably, some lawyers with no previous ties to the state learned of the program through national media and decided to steer their careers to rural South Dakota to fulfill their public interest goals.<sup>701</sup> These interim data provide South Dakota the opportunity to tweak, for example, its marketing strategy and applicant requirements. The data should also prove useful to states who might follow South Dakota’s lead. Policy makers elsewhere might assume that if financial incentives will draw lawyers to South Dakota, similar incentives might attract lawyers to the rural reaches of their states, too. The fact that some Project Rural Practice participants are from outside South Dakota

<sup>692</sup> Our studies indicate that more lawyers are registered and active than are generally available to represent clients. LSC grantees can only take certain kinds of cases; rural lawyers frequently work part-time for the government and accordingly have conflicts of interests, and some rural attorneys simply do not operate general practices. All of these limitations appear in every jurisdiction, but an example arises in our profile of Gregory County, South Dakota. See also *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice.

<sup>693</sup> See *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice (discussing Gregory County’s attorney shortage) and *supra* Section I.A.2, Where California Attorneys Are—and Are Not (discussing Sierra County’s attorney shortage).

<sup>694</sup> See Rebecca Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 UNIV. OF ARKANSAS LITTLE ROCK L. J. 721 (2015) (reviewing studies analyzing why people don’t take their legal needs to lawyers and court).

<sup>695</sup> See *supra* Section I.B, Georgia.

<sup>696</sup> See *supra* Section I.D, Maine.

<sup>697</sup> See generally The Comprehensive Rural Wealth Framework, RURAL POLICY RESEARCH INSTITUTE, available at [www.rupri.org/wp-content/uploads/Rural-Wealth-Framework-Final-12.18.17.pdf](http://www.rupri.org/wp-content/uploads/Rural-Wealth-Framework-Final-12.18.17.pdf) (last visited April 8, 2018).

<sup>698</sup> See RURAL DEV. COUNCIL, *supra* note 248.

<sup>699</sup> See *supra* 75 (noting that the incentive payments for the first group of participants will end soon).

<sup>700</sup> See *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice (profiling Zach Pahlke and Jake Fischer).

<sup>701</sup> See *Id.* (profiling Kristen Kochejian and Jennifer English).



could be particularly useful information for a state like California, where institutions would struggle to offer financial incentives commensurate with the very high cost of ABA-AALS accredited legal education there. California might nevertheless be able to offer financial incentives that would be attractive to those educated elsewhere, who are presumably less burdened by student debt.

Scholars and policy makers should compare data across state lines, as we have done, in order to enhance perspective and provide nuance. States should also endeavor to compare data within their own states, including across counties and along the rural-urban continuum. When engaging in any comparisons, however, researchers must maintain an awareness of methodological differences. Caution is advisable when making state-to-state comparisons of attorneys-per-county numbers and other data measured at the county level. As earlier discussed, one reason for caution is the dramatic variation in the scale of the county: counties in eastern states tend to be much smaller than those in western states. By way of illustration, the average California county is more than seven times larger than the average Georgia county.<sup>702</sup>

Indeed, our state surveys confirm that the county is not always the best “unit” or scale for assessing adequacy of lawyer presence. Recall that South Dakota, though originally designating areas that qualify for the Rural Attorney Recruitment Program based solely on county population, revisited that policy because small communities in otherwise populous and vast counties continued to face lawyer shortages.<sup>703</sup> Policy makers should thus consider other units of measurement, such as the MSSA scale used in California’s Meeker data, under the rationale that one should need to travel no farther to access basic legal services than she travels for basic medical services.<sup>704</sup>

Acknowledging that the “county” may not be an ideal scale for studying rural attorney access to justice, it is nevertheless a logical scale that warrants careful—if also critical—consideration. After all, if every county has a courthouse and holds court within that jurisdiction, there will be a need for lawyers within reasonable proximity. Indeed, it is worth noting that an early goal of the Legal Services Corporation was to establish legal aid offices “in virtually every county in the country in an effort to ensure access to representation.”<sup>705</sup> One can imagine the much more spatially equitable access-to-justice landscape if LSC had achieved that lofty goal.

While some of the data needed to evaluate the justice gap can be gathered without direct human interaction, the value of first-hand perspectives cannot be overstated. Again, qualitative and mixed-method data such as that gathered by Michele Statz’s NSF-funded project in northern Minnesota and Wisconsin is extremely valuable in informing our understanding of how a wide range of stakeholders view and engage—or fail to engage—the legal system. Likewise, survey data such as that collected from new attorneys in Maine<sup>706</sup> and from attorneys and law students in Arkansas<sup>707</sup> can prove valuable to understanding motivations and misconceptions that may stymie rural practice or otherwise undermine rural access to justice. Salary data along the rural-urban continuum, such as that collected by Texas,<sup>708</sup> is also extremely useful.

Collecting qualitative data to assess rural legal needs and resources serves other purposes, too. The process of engaging in direct conversations and larger stakeholder meetings about the legal landscape in a certain country or region can foster a sense of shared purpose. That shared purpose, in turn, helps to encourage community and stakeholder input, as well as buy-in. Champions of access-to-justice initiatives may also emerge from these efforts, thus generating awareness of existing and new legal resources. That

<sup>702</sup> See Table 7.

<sup>703</sup> See S.D. Codified Laws § 16-23-1 (including 2017 amendment that allows “rural counties and municipalities” to participate in the program).

<sup>704</sup> See *supra* Section I.A.2, Where California Attorneys Are—and Are Not (noting how Meeker used the Medical Service Study Areas (MSSAs) to categorize the study).

<sup>705</sup> Albiston et al., *supra* note 588, at 999 (citing Alan Houseman, Legal Aid History, in *POVERTY LAW MANUAL FOR THE NEW LAWYER* 18-25).

<sup>706</sup> See *supra* Section I.D.3, Policy Efforts to Confront Justice Challenges: Reflecting on Maine’s History of Leadership in Championing Access to Justice (discussing results of a study of new attorneys).

<sup>707</sup> See Pruitt et al., *Justice in the Hinterlands*, *supra* note 29.

<sup>708</sup> See Stafford Mader, *supra* note 634.

heightened awareness can lead to better utilization of those resources by clients, as well as better coordination of resource offerings among providers. This comprehensive process of information gathering through relationship building can be especially beneficial in rural communities, where great value is often placed upon interpersonal relationships, and where trust is critical.

Demographic data can shed light on variations among communities so that one-size-fits-all initiatives can be avoided. For example, while self-help information and legal forms made available via a state-sponsored website may prove valuable in urban areas, they may be relatively ineffective in rural places if computer literacy rates are low and Internet access is spotty.<sup>709</sup> Data about computer literacy and Internet access are thus critical when formulating policy interventions. Similarly, navigator programs may work well in cities, where an abundant supply of social workers and volunteers, including college students, are available to staff the court houses.<sup>710</sup> Such programs may flounder in rural courthouses, where they may not attract sufficient volunteers because of human capital deficits. Data about infrastructure and human capital are thus critical when formulating policy interventions.

Indeed, broad differences between rural and urban settings are not the only ones which should be explored. Substantive legal needs may also vary from one rural place to the next. Farmworkers in California might, for example, regularly encounter a legal claim related to pesticide exposure associated with crops not grown in other parts of the country. The details of environmental justice claims will vary from community to community.<sup>711</sup> Specific rural communities may have needs that are broader and more immediate, such as those arising in the aftermath of a natural disaster.<sup>712</sup> Legal programming to address these needs must remain nimble in order to best meet the needs of a particular community at any given time.

At the same time, the best means of addressing specific legal needs can vary among rural places, even within the same state. For instance, the survey of Georgia revealed two impoverished counties with no lawyers.<sup>713</sup> Clay County’s population is 60 percent African-American and suffers significant transportation deficits; home Internet is nearly non-existent.<sup>714</sup> Meanwhile, in nearby Echols County, nearly a third of the county’s population is of Hispanic or Latinx origin and does not speak English at home, while only five percent of households there are without access to a vehicle.<sup>715</sup> If we had reviewed only data on poverty rate and lawyers per county in Georgia, these two counties would look very similar: impoverished and in need of attorneys. The additional data, however, suggest that the best strategies for

<sup>709</sup> Anecdotal evidence suggests that other methods not typically contemplated by access-to-justice reformers—for example, a legal help call-in television show that airs after the local news—may be a more effective means of reaching the public than information disseminated via website. Internet penetration is one of the county-level data points included on the Georgia State University Law School’s Access to Justice Map, <https://cwington3.github.io/AccessToJustice/> (last visited May 22, 2018).

<sup>710</sup> See Rebecca L. Sandefur and Thomas M. Clarke, *Roles Beyond Lawyers: Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and Its Three Pilot Projects*, AM. BAR FOUND. Dec. 2016, available at

[http://www.americanbarfoundation.org/uploads/cms/documents/new\\_york\\_city\\_court\\_navigators\\_report\\_final\\_with\\_final\\_links\\_december\\_2016.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf) (describing reliance on social workers in one pilot program and trained volunteers in another).

<sup>711</sup> See, e.g., Catherine Flowers, *A County Where the Sewer is Your Lawn*, N.Y. TIMES (May 22, 2018), [https://www.nytimes.com/2018/05/22/opinion/alabama-poverty-sewers.html?utm\\_campaign=180525%20Weekend%20Read%20#81&utm\\_medium=email&utm\\_source=EOACLK](https://www.nytimes.com/2018/05/22/opinion/alabama-poverty-sewers.html?utm_campaign=180525%20Weekend%20Read%20#81&utm_medium=email&utm_source=EOACLK); Lisa R. Pruitt and Linda Sobczynski, *Protecting People, Protecting Places: What Environmental Litigation Conceals and Reveals about Rurality*, 47 J. OF RURAL STUDIES 326-36 (2016).

<sup>712</sup> See Kevin Fixler, *Novato Landlord Charged With Price gouging As Prosecutors Scour for Cases after Fires*, THE PRESS DEMOCRAT (Apr. 18, 2018), <http://www.pressdemocrat.com/news/8233679-181/novato-landlord-charged-with-price>; Lorlelei Laird & Terry Carter, *Lessons from Katrina*, ABA JOURNAL (Feb. 2018), [http://www.abajournal.com/magazine/article/lessons\\_from\\_katrina](http://www.abajournal.com/magazine/article/lessons_from_katrina) (“We learned from Katrina that lawyers should be involved in ... bigger-picture rebuilding efforts,” he says. “All these really deep issues that affect policy are also places that lawyers and the legal community can get involved to do what we do best, which is try to promote justice.”)

<sup>713</sup> *Supra* Section I.B.2, Community Legal Needs and Resource Shortfalls; Center Map, *supra* note 260. Five counties had no resident active attorney; see also *supra* Section I.B.2, Community Legal Needs and Resource Shortfalls (profiling two of those counties—Clay County and Echols County).

<sup>714</sup> See *supra* Section I.B.2, Community Legal Needs and Resource Shortfalls.

<sup>715</sup> See *supra* *Id.*

providing legal assistance in these counties may differ dramatically. Similar intrastate differences are apparent in California, Minnesota, Wisconsin, Maine, and South Dakota, where reservation residents not only face unique legal issues (most notably the maze that is tribal-state-federal jurisdictional questions),<sup>716</sup> but also the prospect of needing a lawyer licensed in the local tribal court system.<sup>717</sup> Although five of the six states profiled in this article include federally-recognized Indian tribes, the legal needs of those tribes vary greatly, in part because of Public Law 280.<sup>718</sup>

Finally, good data are tremendous advocacy tools for rural access to justice initiatives. Without detailed data on the location and acuteness of attorney deserts, it is hard to imagine South Dakota legislators’ having funded Project Rural Practice. Charitable funders, too, are looking to create positive change, and rural access-to-justice advocates need data to show them how and where to get a return on their investment.

### *B. Tailor Action to Circumstances, Including in Use of Technology*

Once data are gathered regarding the legal needs and overall legal landscape in a particular area, the programmatic, organizational, and funding structures that are created to meet those needs must also be nimble so that solutions are malleable. Sometimes local or regional tailoring is inevitable, such as in states like Georgia and Wisconsin where decentralized court systems may inhibit the implementation of uniform policies and programs.<sup>719</sup> In other cases, the replication of an initiative in multiple communities is easy, if not always effective, as with self-help mechanisms that use technology.<sup>720</sup>

Limited assistance initiatives like self-help websites should not be used as a substitute for a lawyer when a lawyer is needed, just as a lawyer need not be engaged when a more limited form of assistance will suffice. Policy makers will need good data to know the difference.<sup>721</sup> This tension between direct legal representation and self-help measures is reflected in quotes across our state surveys. A Georgia Supreme Court Justice opined, “If we’re looking to expand access to justice, we have to think about access to justice as being more than access to a lawyer.”<sup>722</sup> At the same time, a Minnesota attorney observed that self-help resources have limits, stating, “You can simplify the formulaic process, but you

<sup>716</sup> See *supra* Section I.A, California (noting California’s Native American population in remote parts of the state); *supra* Section I.C, Northeastern Minnesota and Northern Wisconsin (noting particular complications faced by tribes in northern Wisconsin and Northeastern Minnesota); *supra* Section I.D.1, Institutional Framework and Political Landscape (noting Maine’s Native American population in certain rural parts of the state); and *supra* Section I.E.1, Institutional Framework and South Dakota’s Legal Needs (noting particular access to justice shortfalls on South Dakota’s reservations). For a detailed discussion of the jurisdictional issues inherent in Indian Law, see generally COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 7.01-7.07, at 595-674 (Nell Jessup Newton ed., 2012) [hereinafter COHEN’S HANDBOOK] (discussing tribal, state, and federal civil jurisdiction, including conflicts and choice of law).

<sup>717</sup> As one example, the Rosebud Sioux Tribe in south-central South Dakota requires licensure to practice in tribal court. Several things are required for licensure, including passing a bar examination. ROSEBUD SIOUX TRIBE LAW & ORDER CODE § 9-2-3 (2003) (“All counsel shall also take and pass a Tribal Bar Examination testing their knowledge of tribal law and Professional ethics.”).

<sup>718</sup> Public Law 280, codified as 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321-1326, shifted law enforcement on reservations from the federal government to state governments in six states including all of California and parts of Minnesota and Wisconsin. Maine and South Dakota were not impacted by Public Law 280. For a general discussion of Public Law 280 and its impact on tribes see COHEN’S HANDBOOK § 6.04[3], at 537-78. See also UC Davis Tribal Justice Project, <https://law.ucdavis.edu/centers/critical-race/tribal-justice/> (last visited May 29, 2018).

<sup>719</sup> See *supra* Section I.B.1, Institutional Framework and Resource Allocation (Georgia) and Section I.C.1.a, Northern Wisconsin.

<sup>720</sup> See Becca Raley & Geri Summerville, *Laying a Solid Foundation: Strategies for Effective Program Replication*, ISSUELAB (July 1, 2009); Chris Walk et al., *New Approaches To Comprehensive Neighborhood Changes: Replicating and Adapting LISC’s Building Sustainable Communities Program*, LISC (May 2010), [http://www.lisc.org/media/filer\\_public/c7/bf/c7bfa626-acf1-45d3-b45e-f8a8fe0059f7/lisc\\_report\\_060710.pdf](http://www.lisc.org/media/filer_public/c7/bf/c7bfa626-acf1-45d3-b45e-f8a8fe0059f7/lisc_report_060710.pdf); Ruthe Browne et al, *Empowering Community-Based Organizations to Replicate Beauty Salon-Based Health Initiatives*, AAIUH (2007), file:///Users/Anujan/Downloads/paper162216\_1%20(1).pdf.

<sup>721</sup> See D. James Greiner, Dalié Jiménez, and Lois R. Lupica, *Self-Help, Reimagined*, 92 IND. L.J. 1119 (2017).

<sup>722</sup> Tucker, *supra* note 223.

don’t simplify the law.”<sup>723</sup> A local judge added, “[t]he issue isn’t getting people to the courts. The issue is getting people lawyers.”<sup>724</sup>

Both scholars and justice system administrators are studying the role and promise of technology in meeting legal needs, and technological tools would seem to have particular promise in rural areas because of their distance-bridging potential.<sup>725</sup> Many states are using technology to provide legal services, as through self-help programs. In Georgia, a law library provides internet and computer access for legal research.<sup>726</sup> In Wisconsin, a legal aid provider started an online legal advice program.<sup>727</sup> Montana courts use video conferencing to better serve rural populations.<sup>728</sup> South Dakota offers an annual “Ask a Lawyer” program where “[p]eople across the state can call toll free for [free] advice on family issues, contracts, wills, real estate and more.”<sup>729</sup>

Technology as a means to bring the law closer to rural people will be of little use, however, if digital literacy is low or broadband is absent or limited.<sup>730</sup> Accordingly, states must be careful about investing resources in technology-based solutions without data indicating that intended beneficiaries can meaningfully utilize the services. Pairing new services with digital literacy training or other complementary programming may be a critical supplementary help bridge the gap for some communities.

States must also be careful not to presume they can solve the rural justice crisis merely by connecting rural clients with urban lawyers. Doing so can sacrifice the livelihoods of rural lawyers, when and where they are available or might be enticed to practice. One scholar has observed that the provision of legal services over the internet “seem[s] especially likely to help rural clients connect with urban legal offices.”<sup>731</sup> We believe a better long-term goal is to connect rural clients with local, rural legal offices. After all, some legal services, e.g., court appearances, cannot be provided remotely, and many will be less effective when delivered remotely.<sup>732</sup>

One way to connect lawyers to clients is to meet potential clients where they are, both geographically and in terms of the existing structure of their lives. The Tennessee Faith and Justice Alliance (TFJA), which connects members of faith-based groups to volunteer lawyers in the community, is an example of an access to justice measure that is leveraging the particular values and behaviors of the program’s intended beneficiaries in its organizational structure.<sup>733</sup> Another highly-tailored approach might be a

<sup>723</sup> See redacted interview, *supra* note 345.

<sup>724</sup> See *id.*

<sup>725</sup> See, e.g., Greiner et al, *supra* note 721 (evaluating the utility of various technology-based interventions); Drisko Zago, *supra* note 18, at 30-36 (discussing technology in rural law practice); J.J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 2015 (2017) (noting that video conferencing may “particularly benefit individuals in rural areas”). While not explicitly rural in focus, Harvard Law School’s recognition of the role of technology in bridging access to justice is reflected in its engagement of a technology fellow to provide custom designed technology-based solutions for its clinical programs. Jeri Zeder, *Coding for Justice: A new technology fellowship multiplies the impact of Harvard’s legal clinics*, HARVARD LAW TODAY, Aug. 23, 2017, <https://today.law.harvard.edu/coding-for-justice/>.

<sup>726</sup> See *supra* Section I.B.3, Policy Efforts to Confront Justice Challenges (Georgia – describing the Dougherty County Law Library).

<sup>727</sup> See *supra* Section I.C.3, Policy Efforts to Confront Justice Challenges Across the Northland (explaining Judicare’s Northern Wisconsin Legal Advice Project and its adoption by the state bar).

<sup>728</sup> Pruitt & Showman, *supra* note 18, at 505.

<sup>729</sup> *South Dakota Lawyers Giving Out Free Advice Tuesday Through Thursday*, KSFY, May 1, 2018, <http://www.ksfy.com/content/news/South-Dakota-lawyers-giving-out-free-advice-Tuesday-through-Thursday-481405351.html>.

<sup>730</sup> See *supra* Section II.F, The Political Landscape (discussing technological barriers faced by rural residents).

<sup>731</sup> Prescott, *supra* note 725, at 2011.

<sup>732</sup> Even if some consultations can occur remotely, lawyers must still be available locally to appear in court, particularly in criminal matters. Without local, rural lawyers, counties and municipalities will continue to pay travel expenses for lawyers. See *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice (discussing how rural South Dakota counties and municipalities do not have local lawyers and so must pay to bring in outside attorneys for court appointments and to represent government entities). See also Rina Raphael, *This RV Full of Lawyers Is Touring Rural America To Save Young Immigrants From Deportation*, FAST COMPANY (June 29, 2017), <https://www.fastcompany.com/40435629/this-rv-full-of-lawyers-is-touring-rural-america-to-save-young-immigrants-from-deportation> (discussing the limitations of remote representation, stating, “But you can’t do [remote representation] unless initially present,” cautions Love, “you need the face time.” And later, “You have to be there [physically] . . . . “You have to establish trust in the community.”)

<sup>733</sup> See *Faith-Based Initiative*, *supra* note 314.

medical-legal partnership in a rural area where residents are facing a particular health challenge (e.g., unsafe drinking water, pesticide exposure, or the ill effects of pollution from industrial agriculture) that implicates particular legal issues. To the extent such models are being used, we know little about their efficacy. Pre- and post-implementation data will be critical to assess the ability of any such measures to improve access.<sup>734</sup>

Incentives to increase attorney participation in rural legal markets should also be data driven. For instance, because Maine data suggest that the primary reason law graduates do not enter solo practice is due to fear of income instability,<sup>735</sup> an effective policy intervention there might be an incentive mechanism that guarantees a stable income for a certain number of years upon entering practice in a rural area. That financial incentive could be coupled with other supportive measures to foster a collaborative legal network, including incentives for attorneys to be mentors. What we know about South Dakota’s Rural Attorney Recruitment Program indicates that mentors, assigned to program attorneys based on compatibility rather than location or other rigid categories, are critical to that program’s success.<sup>736</sup> Likewise, a tailored way of recruiting rural students to law school—under the assumption that those recruits are more likely to return home to practice than a student who has never lived in the area—might be to interact with them through rural-based colleges, a topic we return to in Part III.F.<sup>737</sup> Lessons could be drawn from military or college recruiters who visit rural high schools, building relationships with trusted leaders who mentor local students.

Regarding tailored funding structures for such initiatives, the cost-sharing aspect of South Dakota’s Rural Attorney Recruitment Program<sup>738</sup> demonstrates how financial responsibility for an initiative can be apportioned to reflect the intent and beneficiaries of the program.<sup>739</sup> Yet that model may not be readily transferrable to other states, where the salient price points—for example, the cost of living or law school tuition—are significantly higher.<sup>740</sup> Moreover, adoption of South Dakota’s model requires that governments and other stakeholders see that the long-term consequences and costs of unmet legal needs far exceed the cost of incentive programs.

Among rural sociologists, it’s often said that if you’ve seen one rural place, you’ve seen one rural place.<sup>741</sup> The same probably holds true regarding access solutions. We should expect some similarities, but also many differences, regarding what is effective from place to place.

### C. *Emphasize the Importance of Resource Networking*

The tailored and place-specific approach to access to justice that we propose will result in a patchwork of legal resources within a given state and across the country, akin to the patchwork of resources described in Wisconsin,<sup>742</sup> California,<sup>743</sup> and Georgia.<sup>744</sup> This patchwork is welcomed. As

<sup>734</sup> Greiner et al, *supra* note 721.

<sup>735</sup> See *supra* Section I.D.3, Policy Efforts to Confront Justice Challenges: Reflecting on Maine’s History of Leadership in Championing Access to Justice (providing results from a 2014 survey). South Dakota did not conduct any data-driven research before forming Project Rural Practice or instituting the Rural Attorney Recruitment Program. However, the anecdotal evidence gathered by Chief Justice Gilbertson showed the same reaction from law students—a fear of financial instability impeded rural practice. Gilbertson, *supra* note 472, at 439.

<sup>736</sup> See *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice (discussing how the program administrator assigns mentors and the effectiveness of the mentorship program).

<sup>737</sup> See Sloan, *supra* note 572 (discussing Nebraska’s lawyer recruitment program).

<sup>738</sup> See *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice (discussing cost-sharing aspects of the South Dakota program).

<sup>739</sup> *Id.*

<sup>740</sup> South Dakota provides incentive payments of \$13,288 per year for five years, for a total of \$66,440. *Supra* note 497. This amount is around \$20,000 more than the total tuition an in-state law student would pay attending USD Law. *Supra* note 560. But that amount would not come close to covering three years of tuition, let alone the cost-of-living expenses, of a public law school in California. *Supra* note 185.

<sup>741</sup> See Louis E. Swanson & David L. Brown, *Challenges Become Opportunities: Trends and Policies Shaping the Future*, CHALLENGES FOR RURAL AMERICA IN THE TWENTY-FIRST CENTURY, 397 (David L. Brown et al. eds., 2003) (crediting rural sociologist Daryl Hobbs with this aphorism).

<sup>742</sup> See *supra* Section I.C, Northeastern Minnesota and Northern Wisconsin.

suggested in the prior section, an assortment of legal resources and interventions reflects opportunities to provide tailored responses to communities’ varied legal landscapes.

The key to the efficacy of any patchwork structure is that the various components be implemented in response to identified legal needs. Further, individual resources must be coordinated such that each resource understands its own role—as well as the roles of others—within the network. In order to achieve meaningful access to justice, a client should be able to enter a functional network of legal resources through any of its entry points and be guided from that initial resource towards other salient resources until the full spectrum of her legal needs are met. Existing resource networks in a given state, e.g., networks of technical assistance providers such as county extension offices<sup>745</sup> or the many campuses of an extensive university system,<sup>746</sup> can potentially provide the scaffolding for rural access to justice initiatives.<sup>747</sup>

Likewise, existing legal resources may be fine-tuned and expanded as data suggest is appropriate in order to better meet the legal needs of a particular community. Consider, for example, the myriad ways in which county law libraries might serve legal needs.<sup>748</sup> Such libraries can serve as a central meeting space for attorneys and clients from outlying areas. Other law libraries may choose to run shuttles to and from neighboring communities (or alternatively, send mobile libraries into those communities) where access to vehicles is known to be low.<sup>749</sup> Libraries can also provide a place for local residents to access online self-help resources. Where data indicate that digital literacy is low among local residents, staff should be trained to answer basic questions about what resources exist and how to navigate them.<sup>750</sup> In order to maximize the impact and efficiency of each of the initiatives within a network, such coordination of resources must begin with collective advocacy at the funding level and be carried through to implementation.

#### *D. Re-define Roles of Legal Aid and Re-think Pro Bono Services and Lawyer Referral*

Legal aid plays a major role in addressing the rural access to justice crisis, and it must be funded robustly. For those clients and cases to which legal aid is well-suited, funding restrictions should be re-negotiated—where possible—to ensure that funding is tailored to meet the legal needs of communities served and that it allows for flexibility to achieve maximum impact. Advocates should ask whether future

<sup>743</sup> See *supra* Section I.A, California.

<sup>744</sup> See *supra* Section I.B, Georgia.

<sup>745</sup> Indeed, county extension offices may prove key resources for delivering services of all sorts to rural residents because extension agents are typically available in every county. This is an untapped resource connecting universities – and potentially law schools – to rural residents in need. E-mail from Luz Herrera, Prof. of Law, Texas A & M School of Law, to Lisa R. Pruitt, Prof. of Law, Univ. of Calif. Davis (May 13, 2018, 12:54 PM PST) (on file with Harvard Law Library).

<sup>746</sup> Email from Hari Michelle Osofsky, Dean, Pa. State Univ. Coll. of Law, to Professor Lisa R. Pruitt, UC Davis, Sch. of Law (Jan. 16, 2018) (on file with Harvard Law Library). Pennsylvania State University has 20 campuses, including the flagship campus in State College, Pennsylvania.

<sup>747</sup> We discuss other types of networks in Section III.E.

<sup>748</sup> See CAL. CODE, BUS. & PROF. CODE § 6300 (West, Westlaw through Ch. 9 of 2018 Reg. Sess.) (“There is in each county of this State a board of law library trustees, which governs the law library established for the county under the provisions of this chapter.”); *supra* Section I.B.3, Policy Efforts to Confront Justice Challenges (discussing Georgia’s law libraries); *supra* Section I.C.1.b, Northeastern Minnesota (noting the existence of county law libraries in Minnesota).

<sup>749</sup> See e.g., *supra* Section I.B.2, Community Legal Needs and Resource Shortfalls (discussing access to justice issues and the lack of family vehicles in Clay County, Georgia). See also Drisko Zago, *supra* note 18, at 46-51 (discussing the potential of rural law libraries); Terry Carter, *Self-Help Speeds Up*, A.B.A. JOURNAL, Jul. 2001, [https://books.google.com/books?id=CB5n6bZ39eEC&pg=PA37&lpg=PA37&dq=aba+journal+ventura+county+california+mobile&source=bl&ots=7UN-hl\\_j-j&sig=Ud-kYU55sD-D35wBeXD\\_jt4z9l&hl=en&sa=X&ved=0ahUKEwj184Ti\\_6TbAhUMrlkKHZP5BrEQ6AEISjAE#v=onepage&q=aba%20journal%20ventura%20county%20california%20mobile&f=false](https://books.google.com/books?id=CB5n6bZ39eEC&pg=PA37&lpg=PA37&dq=aba+journal+ventura+county+california+mobile&source=bl&ots=7UN-hl_j-j&sig=Ud-kYU55sD-D35wBeXD_jt4z9l&hl=en&sa=X&ved=0ahUKEwj184Ti_6TbAhUMrlkKHZP5BrEQ6AEISjAE#v=onepage&q=aba%20journal%20ventura%20county%20california%20mobile&f=false) (highlighting California program that brought mobile self-help centers modeled on “bookmobiles”). The idea of bringing the lawyers and legal resources to rural people—as opposed to requiring rural people come to where legal resources are—is reflected in Australian efforts to bridge the rural-urban justice gap. See RRR AUSTRALIANS CONSULTATION PAPER, *supra* note 18, at 52-53 (surveying various programs, in Australia and elsewhere).

<sup>750</sup> See Drisko Zago, *supra* note 18, at 20-36 (discussing law library self-help centers).

funds can be allocated for formerly restricted activities, such as the creation of self-help resources, toolkits, workshops, and capacity-building (e.g., language classes for attorneys who are willing to practice in a locale with a particular language need<sup>751</sup>), and for direct representation of formerly unqualified clients or legal needs.<sup>752</sup> While sweeping changes to eligibility requirements may be impractical at the federal level, state and local governments, bar foundations, charitable organizations, and other funders of legal aid have more flexibility to adjust their criteria in ways that permit legal aid providers to meet rural needs more effectively.

Yet there will always be people and legal problems that do not qualify for legal aid or that are not well-suited for legal aid resources. Moreover, legal aid funding is increasingly unreliable.<sup>753</sup> Further, rural America does not merely need legal services attorneys; it needs all sorts of attorneys, including—as the South Dakota experience suggests<sup>754</sup>—attorneys who can respond to the growth of particular industries and contribute to rural economic development. Treating the rural access to justice crisis as merely a legal aid funding crisis does a disservice to rural communities, as it downplays the complexity of legal needs and opportunities for legal practice in rural America. Instead, state access to justice commissions and other advocates and stakeholders should bear in mind that private attorneys are a critical piece of the rural access-to-justice puzzle.

Just as legal aid resources alone cannot meet all rural legal needs, neither can pro bono attorneys, such as those proffered through volunteer lawyer networks do so. Volunteer lawyer networks should only be utilized for clients and cases that are well-served by the type of representation the referral network provides.<sup>755</sup> For instance, clients who may not have a clear or complete sense of what their legal needs are, such as those who have a number of legal issues at the intersection of various practice areas, may not be well served by a referral to a lawyer who is willing to take the case but whose own practice is highly specialized. Having knowledgeable and effective triage lawyers manage the workflow from client intake through representation can help ensure that clients are getting the legal help they need from lawyers who are well-equipped to counsel them through and across the range of issues raised.

An effective pro bono network must be tailored to meet the various legal needs arising in its target community. Ideally, it will also be equipped to address related non-legal needs (even if by way of referral) that must also be addressed in order to holistically resolve the client’s central issue. For instance, clients who are forming new legal entities often need other kinds of help for their business, such as preparing a business plan or obtaining accounting advice. In attempting to coordinate technical assistance providers to address the full spectrum of needs associated with starting a business, the referral network facilitator can ensure that the lines of communication between the client, the one or more attorneys representing the client, and any other prospective assistance providers serving the client remain open and functional.

Cultural compatibility is also integral to successful client outcomes in referral networks. The highest-paid real estate attorney in town is not a valuable pro bono network attorney if her aggressive lawyering style, though prized by her large corporate clients, sours a friendly relationship between a budding entrepreneur and his landlord-turned-friend. Administrators of referral networks should ensure

<sup>751</sup> As only one of many examples of the need for attorneys with second-language skills, Part I.B.2 profiles Echols County, Georgia, where 26 percent of the residents do not speak English at home. See *supra* Section I.B.2, Community Legal Needs and Resource Shortfalls.

<sup>752</sup> As demonstrated by the forthcoming article by Lauren Sudeall Lucas and Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants’ Experiences with Civil Legal Needs*, \_\_ U.C. DAVIS L. REV. \_\_ (forthcoming 2019), many individuals engaged with the criminal justice system have little knowledge of or experience with using civil legal services to address a range of problems they experience during the course of their lives. As noted above, current restrictions on LSC funding prevent legal aid providers receiving such funding from providing representation to those who are incarcerated. Without such assistance, individuals released from criminal custody may face additional obstacles as they attempt to reintegrate into society.

<sup>753</sup> See generally, *supra* Section II.A, Lagging Legal Aid Funding (discussing lagging legal aid funding).

<sup>754</sup> See *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice (referring to the community economic development function of small-town lawyers being placed in Project Rural Practice).

<sup>755</sup> See Pruitt & Williams, *supra* note 152.

that client feedback is continually sought and processed, and that participating attorneys are trained and mentored so that the lawyer-client relationships remain effective.

### *E. Leverage a Shifting Market to Enhance Incentives for Rural Practice*

As important as they are to meeting legal needs, neither legal services organizations nor volunteer attorney referral networks address the current legal market imbalance that has a surfeit of lawyers competing for too few jobs in America’s cities, while many rural areas do without lawyers altogether.<sup>756</sup> Our survey of Minnesota and Wisconsin, for example, revealed that, despite plenty of unmet legal needs in the Northland, every law school in those two states has suffered recent declines in enrollment.<sup>757</sup> Nationally, less than three-quarters of recent law school graduates find jobs that require bar passage.<sup>758</sup> Law schools are facing increasing pressure to produce practice-ready graduates<sup>759</sup> and meet job placement benchmarks at a time when many people are questioning the value proposition of a law degree.<sup>760</sup>

Just as law school tuition has skyrocketed, so has the cost of living in many of our largest cities.<sup>761</sup> This is a particular challenge across California’s metropolitan areas, but also in major metros elsewhere, including Atlanta and the Twin Cities.<sup>762</sup> As a result, many law school graduates must figure out how to afford life in a city while working at a small or mid-sized firm or—more challenging still—while living on a public interest salary.<sup>763</sup>

The current legal economy thus invites a shift toward rural practice, as aging small-town practitioners await new attorneys to whom they pass off books of business. States can facilitate this shift by offering financial incentives to lawyers who enter rural practice. States might also offer incentives to rural lawyers who contribute to activities that support other attorneys in rural practice. Examples of such supportive services include formal mentoring arrangements, teaching continuing legal education classes that equip lawyers for rural practice, or participating in regional networks of attorneys who share the work of rural

<sup>756</sup> See Catherine Rampell, *The Lawyer Surplus, State by State*, N.Y. TIMES: ECONOMIX (Jun. 27, 2011), <https://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state/> [<https://perma.cc/MD9J-8H8Z>]; Jeff Jacoby, Opinion, *US Legal Bubble Can’t Pop Soon Enough*, BOSTON GLOBE (May 9, 2014), <https://www.bostonglobe.com/opinion/2014/05/09/the-lawyer-bubble-pops-not-moment-too-soon/qAYzQ823qpfi4GQl2OiPZM/story.html> [<https://perma.cc/4ZN4-RYNF>].

<sup>757</sup> See Gilyard, *supra* note 377.

<sup>758</sup> Stephanie Francis Ward, *4% Decline in Jobs Requiring Bar Passage for Law Class of 2016, ABA Employment Data Shows*, A.B.A. J. (May 11, 2017, 2:27 PM), [http://www.abajournal.com/news/article/employment\\_data\\_shows\\_challenging\\_job\\_market\\_for\\_2016\\_law\\_grads/](http://www.abajournal.com/news/article/employment_data_shows_challenging_job_market_for_2016_law_grads/) [<https://perma.cc/DE5P-VK3B>].

<sup>759</sup> The topic of “practice-ready graduates” was the theme of a discussion group at the AALS Annual Meeting in 2018, where the overall meeting theme was access to justice. Professor Pruitt spoke about what is at stake for rural America in producing practice ready graduates at a discussion group titled, “A Unique Approach to Access to Justice: Training Lawyers Ready to Serve,” AALS 2018, San Diego, California (Jan. 5, 2018).

<sup>760</sup> See Abigail Hess, *Only 23% of Law School Grads Say Their Education Was Worth the Cost*, CNBC (Feb. 21, 2018), <https://www.cnn.com/2018/02/21/only-23-percent-of-law-school-grads-say-their-education-was-worth-the-cost.html>; Noam Scheiber, *An Expensive Law Degree and No Place to Use It*, N.Y. TIMES (June 17, 2016), <https://www.nytimes.com/2016/06/19/business/dealbook/an-expensive-law-degree-and-no-place-to-use-it.html>; Dylan Matthews, *Ignore the Haters. Law School is Totally Worth the Cash*, THE WASHINGTON POST (July 28, 2013), [https://www.washingtonpost.com/news/wonk/wp/2013/07/18/ignore-the-haters-law-school-is-totally-worth-the-cash/?utm\\_term=.b0e4c6d493d1](https://www.washingtonpost.com/news/wonk/wp/2013/07/18/ignore-the-haters-law-school-is-totally-worth-the-cash/?utm_term=.b0e4c6d493d1).

<sup>761</sup> Mark Gimein, *Why the High Cost of Big-City Living Is Bad for Everyone*, THE NEW YORKER (Aug. 25, 2016), <https://www.newyorker.com/business/currency/why-the-high-cost-of-big-city-living-is-bad-for-everyone> [<https://perma.cc/4RDR-P4K4>].

<sup>762</sup> *Atlanta rent growth among nation’s fastest*, Atlanta J.-Const., Mar. 28, 2018, available at <https://www.myajc.com/business/atlanta-rent-growth-among-nation-fastest/fZ7DCMDwjEjiH004ZqzP1L/> (noting that rents in Atlanta have climbed 35.1 percent since 2010, and by 4.4 percent in just the past year).

<sup>763</sup> *NALP’s Public Sector & Public Interest Salary Report Turns Ten!*, NALP BULLETIN (July 2014), <https://www.nalp.org/july14research> (“In 2013, the most recent associate salary report available, the median salary for a fifth-year associate ranged from about \$100,000 to \$200,000 depending on firm size. These figures are double or triple what an attorney with similar experience makes at a public service organization. The \$160,000 starting salary at big firms in big cities is beyond what even the most experienced attorneys can reasonably expect at a public sector or public interest organization.”)



clients. The latter effectively allow a breadth and depth of experience to be brought to the rural client, far exceeding what any one attorney in the network could provide.

The federal government could consider a loan forgiveness mechanism that encourages lawyers to practice in rural areas, or it could provide some basic funding directly to rural lawyers. The federal government has a long history of providing loan forgiveness as an incentive for certain types of post-graduation work. Federal programs already provide loan repayment assistance for medical professionals<sup>764</sup> and teachers<sup>765</sup> who work in under-served areas. The Public Service Loan Forgiveness Program is a wide-reaching program that allows income-based payments and loan forgiveness for borrowers working for non-profits or the government.<sup>766</sup> Considering the low starting salaries and the high need for new private attorneys in rural areas, a rural practice loan forgiveness program—especially one not tied to public service work—would meet important needs, especially in places where law graduates are burdened with high law school tuition. The federal government program that provides loan repayment incentives for medical professionals reports that over eighty percent of its participants stay in the underserved communities after loans have been forgiven,<sup>767</sup> and it is certainly possible that a program creating incentives for rural lawyering could have a similar enduring impact. As an alternative to running a loan forgiveness program, the federal government could offer grants to the states to operate their own loan repayment programs for rural lawyers, much like the federal government does for medical professionals.<sup>768</sup> Finally, the federal government could operate a program similar to South Dakota’s in that it could provide an incentive payment or stipend to cover a fixed cost, e.g., rent for office space or a subscription to a legal research database.

The California General Assembly has also acknowledged the impact that the state’s low bar pass rate has on access-to-justice concerns, including in rural communities.<sup>769</sup> Lowering the bar “cut score” could serve to inject law graduates into rural communities, either because more of those graduates who grew up in rural areas could return as licensed attorneys, or because others who pass the bar might seek opportunities outside oversaturated urban markets. It is telling that a legal incubator initiative at a Cal-accredited law school in the under-served Central Valley failed to get off the ground due to lack of need among the institution’s graduates.<sup>770</sup> Some 86% of that school’s graduates are practicing in the rural or quasi-rural region in which the institution is based,<sup>771</sup> and the school is now developing a course that would function like an incubator in the sense of teaching practice-ready skills, including marketing to and pricing for modest-means clients, to law students rather than law graduates. That law school is now also a participant in a consortium developing a course aimed to prepare law students in the classroom via experiential education for numerous rural practice opportunities on offer in the region.<sup>772</sup> Another rural incubator in northern California failed simply because its host organization, a lawyer-referral service, closed.<sup>773</sup> Perhaps the second incubator, with its waitlist of attorneys and clients, would have succeeded had it been established and funded in a way that fostered its independence. These experiences should be useful lessons learned as states explore the promise of incubators to grow the number of attorneys serving rural communities.

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<sup>764</sup> *Loan Repayment*, NATIONAL HEALTH SERVICE CORPS, <https://nhsc.hrsa.gov/loanrepayment/> (last visited May 25, 2018).

<sup>765</sup> *Teacher Loan Forgiveness*, FEDERAL STUDENT AID, <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/teacher> (last visited May 25, 2018).

<sup>766</sup> *Public Service Loan Forgiveness*, FEDERAL STUDENT AID, <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service> (last visited May 25, 2018).

<sup>767</sup> Alsgaard, *supra* note 465, at 599 (discussing the National Health Service Corps).

<sup>768</sup> *Id.* (discussing the grant to South Dakota from the National Health Service Corps).

<sup>769</sup> See *supra* Section I.A.4, The Role of Legal Education (discussing a 2018 study by the California Judiciary Committee).

<sup>770</sup> See *supra* Section I.A.3, Policy Responses to Rural Justice Deficits (discussing the failed incubator in Fresno County, California, hosted by San Joaquin College of Law).

<sup>771</sup> See *Id.* See also *supra* Section I.A.4, The Role of Legal Education (discussing San Joaquin College of Law’s graduate placement trends).

<sup>772</sup> See *Id.* (discussing Practice 99 initiative, which trains lawyers to serve low and modest-means clients).

<sup>773</sup> See *supra* Section I.A.3, Policy Responses to Rural Justice Deficits (discussing Northern California Lawyer Access, a failed incubator in Nevada County, California).

Whether law schools and graduates recognize and respond to these needs and opportunities remains to be seen. Not all lawyers will be willing to take the plunge, but the success of South Dakota’s path-breaking initiative<sup>774</sup> suggests that some ambitious and entrepreneurial law graduates are ready to go into rural practice—so long as they are made aware of the opportunity and its benefits, mentorship is available, and the endeavor is financially feasible. In the next section, we discuss the critical role that law schools can play in this regard.

#### F. Engage Legal Educators to Bridge the Rural-Urban Justice Gap

We believe that law schools are well-positioned to narrow the rural-urban justice gap by reaching—at a nascent stage in their careers—those who must ultimately do that bridge-building work. As one Harvard Law student suggested in a 2016 *Harvard Magazine* article about the purpose of Harvard Law School:

There are also whole areas [of legal practice] that don’t exist yet. The rural poor needs help from lawyers on almost all issues of their lives—family law, property law, basic estate planning—and there’s absolutely no model for providing legal services there. To think that we couldn’t inspire Harvard Law students to at least begin thinking about that seems like a very narrow view of our capacity.<sup>775</sup>

This student implies that the burden of integrating rural people and rural issues into legal education should be borne in proportion to an institution’s clout and resources, and we agree. Deficits in rural-oriented efforts will be more glaring among prestigious institutions because they have the potential to make the greatest impact. The general lack of action to date appears to be due largely to a cultural and geographic mismatch that is simultaneously cause, consequence, and illustration of the current divide between coastal elites and rural America.<sup>776</sup>

Deficits in institutional creativity and agility are to blame, too. Law schools, like other institutional communities, tend to be self-perpetuating, culturally and otherwise. Because most law schools have gotten into the habit of prioritizing the placement of graduates in high-status jobs such as large law firms, they may overlook rural opportunities that are not only critical to the long-term wellbeing of our nation, but also good for their graduates. Contrast the state of affairs described by the Harvard Law student with what is happening in South Dakota and Maine, where law schools are drawing attention to rural practice and holding it out as a credible and desirable career option.<sup>777</sup>

In order to shift the culture of legal education in ways that support rural practice, law schools should consider how rural perspectives and opportunities can permeate every aspect of their mission and operation, from recruitment to the classroom to career services counseling. Building awareness of the

<sup>774</sup> See *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice (noting South Dakota’s Rural Attorney Recruitment Program is a first-in-the-nation approach).

<sup>775</sup> Marina N. Bolotnikova, *The Purpose of Harvard Law School*, HARVARD MAGAZINE (Aug. 17, 2016), <https://harvardmagazine.com/2016/08/the-purpose-of-harvard-law-school>. The quote begins by discussing other issues that elite institutions like Harvard may overlook.

“Harvard could do anything it wanted” to try change the balance of jobs in the legal system, [one law student] argues: what if it asked firms to pay for their recruits to do a year of pro bono work? What if it made larger investments in public-interest funding, to pay for legal aid that’s not being funded publicly? She adds: “It’s not just about public defense, and other fields we see, like immigration, that are hungry for lawyers but have no funding.” *Id.*

<sup>776</sup> See generally Pruitt, *Rural and Working-Class White Women*, *supra* note 786 (discussing the Trump-era cultural divide between coastal elites and middle America); Lisa R. Pruitt, *The Geography of the Class Culture Wars*, 34 SEATTLE L. REV. 767 (2011) (illustrating the cultural divide between elites and rural America).

<sup>777</sup> Compare Bolotnikova, *supra* note 775 (indicating no coverage on providing legal issues to the rural poor) with *supra* Section I.E.3, Role of Legal Education (discussing how USD Law promotes rural practice from 1L orientation through graduation) and *supra* Section I.D.4, The Role of the Law School: Contributing to Access-to-Justice Policy Efforts (discussing Maine Law’s new student group and rural placement opportunities and their promotion).

rural justice gap should be an aspect of professional development, just as law schools pride themselves on building awareness of the vulnerabilities and needs of other under-served populations.<sup>778</sup>

Another reason that this agenda-setting work naturally falls to law schools is that it is not well suited to other legal institutions. Law firms and legal aid organizations are busy representing clients. We recognize that state bars, state judiciaries, and state legislatures will need to be part of state-wide policymaking regarding interventions such as recruitment programs—as is happening in South Dakota—but law schools appear best equipped to promote rural practice in the first place. Law schools possess a level of human capital, student energy, name recognition, community status, and an inherent motivation to learn, build and develop that lends itself to projects and initiatives beyond the capacities of other institutions.<sup>779</sup> In the sections that follow, we consider changes law schools can make in three related areas: recruitment and admissions, curriculum, and job placement.

### *I. Recruitment and Admissions*

The easiest way to add a lawyer to a particular community is to educate and train a person who hails from that community and wishes to return.<sup>780</sup> This has been one reason for the success of South Dakota’s Project Rural Practice. Yet one manifestation of the cultural mismatch between legal education and rural America is that people who grow up rural are less likely than their urban counterparts to wind up in law school.<sup>781</sup> In contrast, children with family members who are lawyers or who otherwise regularly (and

<sup>778</sup> While not applied to rural communities, the projects of Harvard Law School’s Community Enterprise Project (CEP) provide multiple examples of law school-based work that could not easily be undertaken by non-law-school-based legal services providers, for a number of reasons. One, the project work that is undertaken by CEP is by definition not connected to individual clients, and many funders of legal aid require that the funds be used to directly serve clients. Two, the project work is often very cross-disciplinary and research- and writing-intensive, which lends itself to teams of students coordinating with various stakeholders and collaboratively tackling the work over the course of the semester in a way that would be difficult for a full-time practicing attorney with an active caseload. Three, because the clinic is hard-funded, it can choose its projects based on community need rather than at the request of a particular funder. For a sample pool of past CEP projects, see <http://clinics.law.harvard.edu/tlc/for-clients/community-enterprise-project/>. While the focus of CEP’s work is community economic development and transactional law, the possibilities for rural-focused law school clinical work as it might differ from private bar and legal aid work are as extensive and varied as the law school clinics that exist across the country. See also Barbara M. Ashwood, *Rural Residents for Responsible Agriculture: Hog CAFOs and Democratic Action in Illinois*, 28 J. OF RURAL SOCIAL SCIENCES 76, 85 (2013) (discussing the role of Washington University School of Law’s Interdisciplinary Environmental Clinic in doing environmental justice advocacy as it helped a rural community to resist a concentrated animal feeding operation in rural Illinois).

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<sup>780</sup> See *supra* note 572 (discussing Nebraska’s Rural Law Opportunities Program); see also *supra* note [ ] and accompanying text. See also Trish Mundy, *A HECS Rebate? Ways to attract and retain graduate lawyers in rural, regional and remote communities*, 35 ALTERNATE L.J. 99 (2010) (finding that prior background in a rural area suggests a great potential for returning to rural practice).

<sup>781</sup> See Douglas Belkin, *For Colleges, A Rural Reckoning*, WALL STREET J. (Dec. 1, 2017), <https://www.wsj.com/articles/for-colleges-a-rural-reckoning-1512159888> [<https://perma.cc/34BX-KTAE>]; Laura Pappano, *Colleges Discover the Rural Student*,

positively) interact with lawyers can more easily see themselves entering the legal profession.<sup>782</sup> Without rural law students, an important population representing economic, geographic, and cultural diversity remains effectively excluded from these institutions and from the very endeavor of legal practice.<sup>783</sup> This deficit will be aggravated as the rural attorney shortage becomes more acute and the number of rural youth who do not know a single lawyer—because there literally is none in her county or region—increases.

But recruitment is only one book-end; the other is job placement. The prevailing approach to law school placement—channeling the relatively few rural residents who do wind up in law schools on to cities for jobs—only serves to exacerbate rural human capital deficits.<sup>784</sup> As another Harvard Law student commented in that same 2016 *Harvard Magazine* story:

“If I’m the governor of Arkansas, what does Harvard do for me? It takes my brightest kids and sends them to New York, . . . The answer is for Harvard to be a good neighbor to our country,” not just to the few coastal cities where the largest firms cluster.<sup>785</sup>

Reversal of this trend will require not only intentionality; it will require a re-thinking of the definition of success.

## 2. Curriculum

The issue of *who* is in law school is related to the issue of *what* law schools teach. The urban-centrism of substantive laws and law-making<sup>786</sup> aggravates the disconnect between legal education and rural America, which can further devalue rural experience and rural knowledge.<sup>787</sup> Without a critical mass of law students—and, consequently, the legal professoriate—who hail from rural places or otherwise have significant connections to them, classroom discussions may lack an awareness of how a given law or the justice system more generally operates in rural communities.<sup>788</sup> Consider, for example, the dramatically

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N.Y. TIMES (Jan. 31, 2017), <https://www.nytimes.com/2017/01/31/education/edlife/colleges-discover-rural-student.html> [https://perma.cc/54QW-7233].

<sup>782</sup> In an attempt to counter this trend, at least one state has developed a pipeline program to reach rural, college-bound students. See *supra* note 572 (discussing Nebraska’s outreach to rural high school students and the incentives to attend law school and return home to practice law). See also Amanda L. Kool & Lisa R. Pruitt, *It’s Time to Heed the Call of Rural America*, NAT’L L.J. 82 (May 1, 2017); Robin Runge & Christyne J. Vachon, *Planting the Seeds and Getting into the Field: The Role of Law Schools in Ensuring Access to Justice in Rural Communities*, 59 S.D. L. REV. 616 (2014).

<sup>783</sup> See Lisa R. Pruitt, *The False Choice between Race and Class and Other Affirmative Action Myths*, 63 BUFF. L. REV. 981 1040–1042 (2015) (discussing Espenshade and Radford’s study of college admissions, which revealed a failure of admissions officers to value students with markers of rural backgrounds, such as 4-H participation); Lisa R. Pruitt, *Who’s Afraid of White Class Migrants? On Denial, Discrediting and Disdain (and Toward a Richer Conception of Diversity)*, 31 COLUM. J. GENDER & L. 196 (2015); Lisa R. Pruitt, *How You Gonna’ Keep Her Down on the Farm*, 78 U. MO. KAN. CITY L. REV. 1085 (2009–2010).

<sup>784</sup> See Maria Kefalas and Patrick Carr, *HOLLOWING OUT THE MIDDLE: THE RURAL BRAIN DRAIN AND WHAT IT MEANS FOR AMERICA* (2010).

<sup>785</sup> Bolotnikova, *supra* note 775.

<sup>786</sup> See, e.g., Lisa R. Pruitt, *The Women Feminism Forgot: Rural and Working Class White Women in the Era of Trump*, 49 TOLEDO L. REV. (forthcoming 2018) (keynote address at 2017 Gender Equality: Progress and Possibilities symposium) (documenting the failures of feminist legal theory, reproductive justice, and poverty law text books to discuss rural issues related to these fields). Lisa R. Pruitt & Marta R. Vanegas, *Urbanormativity, Spatial Privilege, and Judicial Blind Spots in Abortion Law*, 30 BERKELEY J. GENDER L. & JUST. 76 (2015) (demonstrating the metrocentrism in abortion and voting rights litigation); Pruitt, *Rural Rhetoric*, *infra* note 790 (surveying judicial assumptions about rural people and places in a wide range of contexts).

<sup>787</sup> See Lisa M. Heldke, *Farming Made Her Stupid*, 21 HYPATIA 151 (2006); Lisa R. Pruitt, *The Women Feminism Forgot: Rural and Working Class White Women in the Era of Trump*, 49 TOLEDO L. REV. (forthcoming 2018) (keynote address at 2017 Gender Equality: Progress and Possibilities symposium).

<sup>788</sup> See *supra* note 19 (discussing rural-proofing, a practice used in some nations to assess the impact a law is likely to have in rural places, as a way to avoid urbanormativity). Of course, bringing these students into law school is only the first step. We must then encourage them to speak up, to express their opinions. See generally Samia E. McCall, *Thinking Outside the Race Boxes: A Two-Pronged Approach to Further Diversity and Decrease Bias*, 2018 B.Y.U. EDUC. & L. J. 23 (arguing that once a diverse group of students is brought into a law school, more work remains to be done to ensure that all voices are heard and respected).

different role that guns play in rural life compared to urban life.<sup>789</sup> Without rural Americans in the law school classroom, this perspective is unlikely to surface. Thus, broader based notions of diversity that value rural students and their perspectives will enhance all law students’ educational experiences.

A law student’s exposure to “rural” law should not be solely through the study of food law or agricultural law. To do so unhelpfully limits the scope of perceived opportunities, as well as the ways in which rural spatiality and other rural characteristics are legally relevant to a range of issues.<sup>790</sup> Rural aspects of every substantive course should be surfaced, starting with, for example, torts (the locality rule) and property law (nuisance, right to farm) in the first-year.<sup>791</sup> Rural-urban differences can also be noted in upper division courses on the legal regimes that govern the family; taxation; healthcare; the environment, energy, and natural resources; education; and other sectors of the administrative state. Various constitutional issues have enormously differential implications for rural Americans.<sup>792</sup> American Indian law, poverty law, and other courses in the public interest curriculum provide natural opportunities for exposing students to rural livelihoods and rural difference.<sup>793</sup>

Additionally, the assumption in legal education that students will eventually focus on one or more narrow practice areas may be a poor fit for lawyers who aim to practice as generalists, a strategy that may well be a practical necessity in rural areas. In order that law students who aspire to rural practice are prepared to pursue that goal,<sup>794</sup> they should have access to course offerings on General Practice, Law Practice Management, and a variety of skills and clinical opportunities.<sup>795</sup> To some extent, this work is currently being done by incubators who work with law graduates *after* the three years of legal education. Such training should become part of what is on offer *during* law school.

Another curricular consideration is whether and how experiential opportunities such as clinics, externships, and internships expose students to—and validate—rural career trajectories.<sup>796</sup> Currently, few law schools provide significant or meaningful opportunities for their students to connect with rural America and its denizens. Any connections made are too often one-dimensional and short-lived.<sup>797</sup>

<sup>789</sup> See Ruth Igielnik, *Rural and Urban Gun Owners Have Different Experiences, Views on Gun Policy*, PEW RESEARCH CENTER (July 10, 2017), <http://www.pewresearch.org/fact-tank/2017/07/10/rural-and-urban-gun-owners-have-different-experiences-views-on-gun-policy/>; Chris Bodenner, *The Rural-Urban Divide on Guns*, THE ATLANTIC (Dec. 4, 2015), <https://www.theatlantic.com/notes/2015/12/the-rural-urban-divide-on-guns/418869/>; Chuck Raasch, *In Gun Debate, Its Urban vs. Rural*, USA TODAY (Feb. 27, 2013), <https://www.usatoday.com/story/news/nation/2013/02/27/guns-ingrained-in-rural-existence/1949479/>.

<sup>790</sup> See generally Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159 (2006) (discussing the legal relevance of rurality to a wide range of legal issues and surveying illustrative cases). For an Australian perspective on this issue, see Amanda Kennedy, Trish Mundy, Jennifer Nielsen, Caroline Hart, Richard Coverdale, Reid Mortensen, Theresa Smith-Ruig, and Claire Macken, *Educating Law Students for Rural and Regional Legal Practice: Embedding Place Consciousness in Rural Curricular*, 24 LEGAL ED. REV. 6 (2014); Kim Browne, *Rural Lawyers and Legal Education: Ruralising and Indigenising Australian Legal Curricula*, 6<sup>th</sup> Annual International Conference on Education & E-Learning paper 50, 52 (2016), cited in RRR AUSTRALIANS CONSULTATION PAPER, *supra* note 18, at 8.

<sup>791</sup> See Pruitt, *Rural Rhetoric*, *supra* note 790, at 184-87, 191, 194, 199 (discussing the rural-urban dichotomy and the rural aspects that should be surfaced from law school courses such as torts, property, and criminal procedure).

<sup>792</sup> See, e.g., Pruitt & Colgan, *supra* note 15 (discussing sixth amendment right to counsel in relation to rural-urban difference, as well as issues such as the use of lay judges, which the Supreme Court has sanctioned); Pruitt, *Rural Rhetoric*, *supra* note 790.

<sup>793</sup> Lisa Pruitt has been teaching a course she created, Law and Rural Livelihoods, at UC Davis School of Law since 2008. Many students drawn to a career in public interest law enroll in the course because its content focuses on a vulnerable population and includes rural poverty and rural disadvantage in relation to services.

<sup>794</sup> See Pruitt et al., *Justice in the Hinterlands*, *supra* note 29, at 638, 642, 650 (discussing how the threat of malpractice lawsuits, the perception of lack of availability of legal mentors, and cost of online legal research tools are top concerns to Arkansas law students regarding entering rural legal practice).

<sup>795</sup> See *supra* note 759 (discussing the importance of producing practice-ready lawyers, the topic of a discussion group at the 2018 AALS Annual Meeting). See generally Eli Wald, *The Contextual Problem of Law Schools*, NOTRE DAME J. OF L., ETHICS AND PUBLIC POLICY (forthcoming 2018), available on SSRN.com.

<sup>796</sup> See Christopher Chavis, *Maine Sees Its Rural Lawyer Shortage and Sets Out to Fix It*, LEGAL RURALISM (Nov. 19, 2017), <https://legallruralism.blogspot.com/2017/11/maine-sees-its-rural-lawyer-shortage.html> [https://perma.cc/CAM4-B4GT].

<sup>797</sup> A number of states, including some profiled in this article, have invested in bus tours to rural areas. See, e.g., *supra* Section I.C.3, Policy Efforts to Confront Justice Challenges Across the Northland (discussing the Greater Wisconsin Initiative Bus tour); *supra* Section I.A.4, The Role of Legal Education (discussing One Justice’s Justice Bus in California).

As law schools begin to take seriously rural prospects and the need to train students to rise to them, opportunities for innovation will abound. Coalitions of law schools could share the task of creating and delivering curriculum to equip would-be rural practitioners.<sup>798</sup> This would permit law schools to bolster their own offerings through shared investment and effort.<sup>799</sup> Similarly, partnerships between law schools and rural-based colleges could eventually allow rural students to access legal education without leaving their communities—at least not for the entire three-year stint typically required for a law degree.<sup>800</sup> Such a program would make it easier for those graduates to establish a rural practice quickly, in a place they know. Likewise, reciprocity arrangements with rural-based law schools would allow urban-based students to access curricula and communities not otherwise available to them. Satellite campuses, cross-registration arrangements, and online course delivery could meet future students where they are and educate them in the communities in which they will eventually practice.<sup>801</sup>

### 3. *Career Services/Placement*

In addition to the problem of urban-centric law school culture and curriculum—often exacerbated by the fact that most law schools are located in urban places<sup>802</sup>—many law schools are unduly narrow in their approach to job placement for their graduates. While institutions such as the University of South Dakota Law School and Maine Law actively promote rural and small-firm practice,<sup>803</sup> many other law schools implicitly steer graduates towards large law firms.<sup>804</sup> At one point or another, most law students and young lawyers have heard success defined as landing a high-paying, “big law” job.<sup>805</sup> Those students inclined toward public interest work, on the other hand, are often steered towards fellowships. Government positions fall somewhere between. On-campus recruitment efforts and job fairs provide students with well-trodden exposure to these common and more familiar opportunities.

Yet the legal market is changing as firms demand practice-ready graduates and emerging legal constructs such as social enterprises<sup>806</sup> blur the lines between nonprofit and for-profit legal work. Meanwhile, technology, off-shoring, and shifting legal needs inject uncertainty into the typical classroom-to-workplace path.<sup>807</sup> The upside of this uncertainty is that it creates opportunities for those who are

<sup>798</sup> See Quitugua, *supra* note 644 (discussing Baylor Law’s Legal MapMaker program, open to graduates of all Texas law schools).

<sup>799</sup> See *supra* Section I.A.4, The Role of Legal Education (discussing development and goals of Practice 99 course).

<sup>800</sup> See Pruitt & Showman, *supra* note 18, at 478 (describing an ABA-approved program by Seattle University School of Law that has allowed students to complete their third year of studies at a satellite campus in Anchorage, Alaska since 2015, with the goal of making legal careers more desirable and accessible to Alaskans while also exposing more students to Alaska generally in the hope that some will choose careers there.)

<sup>801</sup> *Id.* See also Mary Dracup and Richard Coverdale, *E-Learning Opportunities and challenges for legal education in Rural Victoria*, 40 *ALTERNATIVE L. J.* 127 (2015).

<sup>802</sup> See Christopher Chavis, *supra* note 213 (arguing that “law schools, like lawyers, are distributed in a manner that encourages economically inefficient clustering in urban centers”). See also *supra* note [ ] and accompanying text. During the fall of 2017, a task force was convened to contemplate moving the University of South Dakota School of Law from Vermillion to Sioux Falls, the state’s largest city. The task force recommended the law school stay in Vermillion on the University’s main campus. Megan Raposa, *USD Law School Should Offer Classes in Sioux Falls, Task Force Says*, *ARGUS LEADER* (Oct. 6, 2017), <https://www.argusleader.com/story/news/education/2018/03/20/more-change-usd-law-school-dean-steps-down/442288002/> [<https://perma.cc/2DXL-2PKZ>].

<sup>803</sup> See also Wandler, *Supply and Demand*, *supra* note 18; Hillary Wandler, *Expanding Local Legal Services*, *supra* note 18.

<sup>804</sup> Bolotnikova, *supra* note 775 (indicating that the career path of least resistance at Harvard Law is a job at a large law firms).

<sup>805</sup> See *Paths to a Successful Career Outside the Traditional Big Law Firm*, A.B.A.: YOUR A.B.A. (Apr. 2014), <https://www.americanbar.org/publications/youraba/2014/june-2014/paths-to-a-successful-career-outside-the-traditional-big-law-firm.html> [<https://perma.cc/U7V7-Z6YY>].

<sup>806</sup> *What is a Social Enterprise?*, SOCIAL ENTERPRISE ALLIANCE, available at <https://socialenterprise.us/about/social-enterprise/> (last visited Apr. 22, 2018).

<sup>807</sup> See Steve Lohr, *A.I. Is Doing Legal Work. But It Won’t Replace Lawyers, Yet*, *N.Y. TIMES* (Mar. 19, 2017), <https://www.nytimes.com/2017/03/19/technology/lawyers-artificial-intelligence.html>; David J. Parnell, *The Legal Institute For Forward Thinking: Legal Trends, Observations And Predictions For 2018*, *FORBES* (Jan. 8, 2018),

entrepreneurial and aim to innovate. Perhaps entrepreneurial students with tech-based or otherwise innovative ideas for disrupting the legal market can be supported and encouraged to apply their ingenuity to addressing the rural access to justice crisis.<sup>808</sup> These ideas might include ways for attorneys to practice across vast distances within which an adequate client pool cannot be achieved in any one locale. Perhaps niche, specialized practice opportunities exist in a given rural community—opportunities not on offer in urban environs; a law school may be the best placed institution to connect students to that opportunity.

Likewise, law schools should be creative—and allow students to be creative—in exploring opportunities for rural practice. Perhaps a school’s criteria for loan repayment assistance and fellowships could be adjusted to ensure that low bono practices in underserved areas qualify for these benefits. Job fairs, networking events, and recruitment efforts could be organized by geography rather than by employer to give students interested in rural practice a sense of the legal market in a particular rural region. A succession-planning program for aging lawyers who are looking for new attorneys to whom they might sell their practice, similar to the program in Georgia,<sup>809</sup> should be on offer in every state.

Once rural opportunities are more thoughtfully explored and identified, career counselors should be intentional about promoting them to students. Legal educators should be mindful not to unintentionally perpetuate—or allow others to perpetuate—stereotypes about rural life and rural people, stereotypes that could dissuade students from exploring rural opportunities.<sup>810</sup> Student organizations such as the Finch Society at the University of Maine and UALR-Bowen can also play key roles by connecting rural-minded students within their own law schools, as well as among law schools.<sup>811</sup>

When exposing students to rural opportunities, law schools should be mindful to avoid pigeonholing rural practice as a single type of practice for a certain type of person. Instead, they should begin to see it as *any* type of legal practice, by any type of person, taking place in a rural setting or serving rural communities. The benefit of such a shift in mindset will clearly inure to students who wish to undertake rural practice. Law schools will also be beneficiaries of such a shift because a broad range of legal practice opportunities increases the likelihood that the school’s graduates will be meaningfully employed after graduation, a metric of great import to legal educators in a world where such data drives law school rankings.<sup>812</sup>

Another way to support would-be rural lawyers is to partner them with rural mentors whose own careers demonstrate positive and viable rural career trajectories. In order to overcome the prevailing “big firm” metric of success, influential professors, administrators, and other thought leaders in legal education must champion the cause of rural lawyering, presenting the prospect of rural practice as an exciting career opportunity. The Chief Justice of South Dakota has been doing this for several years—and it is working.<sup>813</sup>

#### 4. Conclusion

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<https://www.forbes.com/sites/davidparnell/2018/01/08/legal-institute-forward-thinking-trends-observations-and-predictions/> (discussing the future impact of technology, off-shoring, and outsourcing on the legal profession).

<sup>808</sup> See, e.g., Elaine McArdle, *Greiner, HLS Students Spearhead New Consumer Debt Relief Project*, HARV. L. TODAY (Jan. 29, 2014), <https://today.law.harvard.edu/greiner-hls-students-spearhead-new-consumer-debt-relief-project/> [<https://perma.cc/GC6H-QBB6>] (“The project, the largest randomized study ever conducted in the law, is expected to last five or six years, and is designed to find out how and when legal aid is most effective, a kind of triage framework to best deploy limited legal services.”).

<sup>809</sup> See *supra* Section I.B.2, Community Legal Needs and Resource Shortfalls (discussing Georgia’s Succession Planning Pilot Program).

<sup>810</sup> See Pruitt et al., *Justice in the Hinterlands*, *supra* note 29, at 646.

<sup>811</sup> See *supra* Section I.D.4, The Role of the Law School: Contributing to Access-to-Justice Policy Efforts (discussing Maine Law’s Finch Society); Wandler, *Supply and Demand*, *supra* note 18, at 252 (reporting on the University of Montana School of Law’s Rural Advocacy League, which organizes a Rural Law week annually).

<sup>812</sup> See Robert Morse & Kenneth Hines, *Methodology: 2019 Best Law Schools Ranking*, US NEWS & WORLD REPORT (March 19, 2018), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>.

<sup>813</sup> See *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice and *supra* Section I.E.3, Role of Legal Education (discussing Chief Justice Gilbertson’s role in promoting Project Rural Practice, including speaking at 1L orientation each fall at USD Law).

As with solving the access-to-justice crisis itself, no one strategy or program will meet all the needs of law schools aiming to support rural practice and rural justice systems. Rather, innovators in legal education would ideally develop a plethora of interventions. Law schools can then select from among these the best options to serve their particular student body and the communities in which they place their graduates and help launch careers.<sup>814</sup>

Law schools must be careful to ensure that rural engagement is not a paternalistic or voyeuristic one-way street,<sup>815</sup> even when employing technology to bridge distances between an urban campus and far-flung rural residents.<sup>816</sup> Law schools should recognize that meaningful engagement occurs when ideas and information are shared in both directions. In short, legal educators have much to learn about and from rural America. When law schools share that knowledge with their students, when they facilitate and invite discussions of rural issues, livelihoods and people, they expand all students’ awareness and cultural competency. This, in turn, will endow students—who will someday be lawmakers, leaders, and legal educators—with greater knowledge of and empathy for the rural side of the rural-urban divide, regardless of where they ultimately work and live.

The Chief Justice of South Dakota has opined that, when it comes to the rural attorney shortage, “substantial relief will not likely come from what have been described as the ‘First Tier’ Law Schools, but rather from bolstering and partnering with our state’s law school to see that students are aware of this opportunity for a successful rural practice.”<sup>817</sup> Indeed, ninety percent of South Dakota’s licensed attorneys are graduates of that state’s sole law school.<sup>818</sup> California is rich in “First Tier” law schools, but those institutions appear to be doing relatively little to respond to that state’s rural justice deficits. We suggest that California policy makers would be wise to take seriously the promise of California-accredited law schools when it comes to ameliorating the rural lawyer shortage.<sup>819</sup> Yet while we heartily applaud what is happening at the University of South Dakota and appreciate the role played by Cal-accredited institutions in the Golden State, we are unwilling to let “First-Tier” law schools off the hook. All legal educators have the potential to help ameliorate the rural-urban justice gap; all have roles to play.

#### IV. CONCLUSION

America’s so-called “rural-urban divide” and the issues this apparent binary presents might be more aptly and constructively visualized as a Venn diagram wherein rural populations, socioeconomic challenges, legal needs, and legal resources overlap. One challenge is to identify where the intersections are and then to broaden that shared ground in search of solutions. In doing so, stakeholders must also remain aware of divergences: the ways in which rural and urban are different, but also the variations

<sup>814</sup> Christopher Chavis advocates widespread adoption of the uniform bar exam (UBE) as a means of increasing rural access to justice by making bar licenses more portable across state lines. This approach to bar passage and licensing would allow individuals to more easily take the bar in one state but not remain functionally tied to that state as a result of the lengthy and complicated processes currently required to transfer bar licenses from one state to another. Chavis posits that the uniform bar exam approach is particularly beneficial to rural states without large city centers, where people do not tend to initially take the bar exam, and especially those states that are in close proximity to other states. As the bar exam is traditionally taken soon after law school graduation and much of the preparation for the bar exam ostensibly comes from taking law school classes, law schools themselves would need to change their career counseling and course selection guidance to adequately explain to students the benefits and consequences of taking the UBE. See Christopher Chavis, *Is the Uniform Bar Exam an Answer to the Rural Lawyer Shortage?*, LEGAL RURALISM (Nov. 23, 2017), <https://legalruralism.blogspot.com/2017/11/is-uniform-bar-exam-answer-to-rural.html> [https://perma.cc/M29X-N5AK].

<sup>815</sup> Nancy Cook, *Looking for Justice on a Two-Way Street Poverty, Justice, and Community Lawyering: Interdisciplinary and Clinical Perspectives*, 20 WASH. U. J.L. & POL’Y 169 (2006).

<sup>816</sup> See *supra* note [ ]; see also Pruitt and Williams, *supra* note 152, at [ ].

<sup>817</sup> Gilbertson, *supra* note 472, at 442. As noted above, only two Project Rural Practice participants had no prior ties to South Dakota. See *supra* Section I.E.2, Policy Efforts to Confront Justice Challenges: Project Rural Practice (profiling the two non-South Dakotans Kristen Kochejian and Jennifer English).

<sup>818</sup> *Id.*

<sup>819</sup> See *supra* Section I.A.4, The Role of Legal Education (discussing California’s law schools, including California-accredited schools in quasi-rural locales).



among rural populations, rural legal needs, and the strategies that are—or could be—employed to meet these.

All stakeholders should recognize that the rural access to justice problem is not a problem only for rural people and communities. Rather, it is a national problem, and solving it will require action by stakeholders along the rural-urban continuum. Every court, every law school, every bar association, every access to justice commission and, yes, every lawyer should help bear this challenge and be part of the solution. For rural and urban are indelibly inter-dependent,<sup>820</sup> and, as Martin Luther King, Jr., observed half a century ago, “injustice anywhere is a threat to justice everywhere.”<sup>821</sup> When rural people can’t access justice, that’s an injustice to all. Ignoring these pervasive and burgeoning rural justice deficits will only deepen the cultural and economic chasms within our nation.

Seen in another light, the rural access to justice crisis emerges as an opportunity, one by which we might innovate within the legal profession and create new paths to legal practice, develop new legal careers. Rural clients are plentiful,<sup>822</sup> as are rural quality-of-life markers such as open spaces, tight-knit communities, and affordable housing. Many existing rural lawyers are willing mentors for the next generation of rural attorneys, if only so that they might sell their existing practices rather than shuttering for retirement with no one there to take their place.<sup>823</sup> Challenges must be overcome, certainly, including how to ensure a practice is profitable while services are affordable. Yet as the imbalance between law school graduates and available employment remains, and as broadband access opens doors to bridging distances and employment prospects between our cities and our rural areas, rural opportunities become increasingly compelling. In addition to addressing a critical need, economic reasons should compel young lawyers, law schools, governments, and others to invest in rural access to justice.

As we have demonstrated here, determining the legal needs of a particular rural area and devising solutions to meet these needs should be a highly tailored, data-driven endeavor, undertaken by a network of diverse stakeholders united in a commitment to equitable access to justice. We can and must learn from one another as we design strategies to meet the legal needs that rural people and their communities identify. We must also remember that no two rural communities are the same and that solutions must likewise be nuanced and locally-relevant. With this in mind, bolstered by comprehensive data, and with an appreciation for our nation’s rural strengths and diversity, we can devise solutions to the rural access to justice crisis that are as varied, unique, and vibrant as the land and populations across which they must ultimately be deployed.

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<sup>820</sup> See Lichter & Ziliak, *supra* note 38 (providing overview of special issue of ANNALS of AAPSS on the interdependency of rural and urban).

<sup>821</sup> Martin Luther King Jr., *Letter From Birmingham Jail*, THE ATLANTIC (Aug. 1, 1963), <https://www.theatlantic.com/politics/archive/1963/08/martin-luther-kings-letter-from-birmingham-jail/274668/> [<https://perma.cc/K4NH-DCGK>].

<sup>822</sup> See *supra* notes [ ] and accompanying text.

<sup>823</sup> See Bronner, *supra* note 502.